TRANSNATION TITLE INSURANCE COMPANY

234 NORTH CENTRAL AVENUE, SUITE 670
PHOENIX, ARIZONA 85004

NAIC COMPANY #50012

MARKET CONDUCT EXAMINATION REPORT

AS OF DECEMBER 31, 1999

Duane G. Rogers, Esq.
&
J. Reuben Hamlin, Esq.
Independent Market Conduct Examiners
Working in Coordination with
Colorado Division of Insurance
1560 Broadway, Suite 850
Denver, Colorado 80202
(303) 894-7499

TRANSNATION TITLE INSURANCE COMPANY

234 NORTH CENTRAL AVENUE, SUITE 670
PHOENIX, ARIZONA 85004

MARKET CONDUCT EXAMINATION REPORT as of December 31, 1999

Prepared by
Duane G. Rogers, Esq.
&
J. Reuben Hamlin, Esq.

Independent Contract Examiners

September 7, 2000

The Honorable William J. Kirven III
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected rating, underwriting, claims and general business practices of the title insurance business of Transnation Title Insurance Company has been conducted. The Company's records were examined at its Colorado State Administrative Offices located at 1099 18th Street, Suite 600, Denver, Colorado.

The examination covered a one-year period from January 1, 1999 to December 31, 1999.

A report of the examination Transnation Title Insurance Company is herein respectfully submitted.

Duane G. Rogers, Esq. &
J. Reuben Hamlin, Esq.
Independent Market Conduct Examiners

MARKET CONDUCT
EXAMINATION REPORT
OF
TRANSNATION TITLE INSURANCE COMPANY

TABLE OF CONTENTS

COMPANY PROFILE

Transnation Title Insurance Company, hereinafter referred to as "the Company", is a wholly owned subsidiary of Land America, a Virginia Corporation. The Company is authorized to write title insurance coverage in Colorado and was first licensed in the State of Colorado on November 27, 1995.[1]

The Company, an Arizona corporation, is the successor by merger to Transamerica Title Insurance Company, a California company first incorporated on March 26, 1910. The California corporation changed its domicile to Arizona in 1995 and the name was changed to the Company's current name.

The Company is engaged in the title insurance business on a nationwide basis and, is licensed as a title insurer in 40 states and the District of Columbia. The Company's ultimate parent, Land America, is a holding company for a group of title insurers including Commonwealth Land Title Insurance Company, Transnation Title Insurance Company, and Lawyers Title Insurance Corporation.

Although incorporated in Arizona, the Company maintains it's national headquarters in Richmond, Virginia and provides title insurance nationwide through independent agents and direct operations. A majority of Colorado business is written by direct operations, however, the Company provides title services throughout Colorado through a few independent agencies which accounted for 15% of the Company's direct premium written in Colorado during 1999. Underwriting review and Claims adjustment are conducted through various divisional offices located throughout the United States. Colorado underwriting operations are managed through the Company's Denver Office. Colorado claims are handled in the Company's Regional Claims Office located in Seattle, WA, however, some claims were administered out of the Company's Denver Office during the initial period of the examination.

For the calendar year 1999 the Company reported $17, 534,253 in direct premiums in Colorado representing 8.8% of the total Colorado title insurance market. Direct title premium in Colorado written through direct operations and affiliates totaled $14,912,860. Direct title insurance premiums written through nonaffiliated agents totaled $2,639,242.[2]

---

1 The Company's predecessor, Transamerica Title Insurance Company of Colorado was authorized and operating in Colorado as early as 1964.

2 Figure representing direct premium written provided by the Company as reported in its Schedule T of Form 9 of the Company's annual statement. Figure representing market share provided by the Company.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law § 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct exams. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The market conduct examination covered by this report was performed to assist the Colorado Commissioner of Insurance to meet certain statutory charges by determining Company compliance with the Colorado Insurance Code and generally accepted operating principles. Additionally, findings of a market conduct examination serve as an aid to the Division of Insurance's early warning system. The intent of the information contained in this report is to serve only those purposes.

This examination was governed by, and performed in accordance with, procedures developed by the Colorado Division of Insurance based on the National Association of Insurance Commissioners Model Procedures. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company and its agents. The examination covers one year period of the Company's operations, from January 1, 1999 to December 31, 1999.

File sampling was based on review of systematically selected samples of underwriting and claims files by category. Sample sizes were chosen based on guidance from procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms. These comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample, the Company was provided a summary of the findings for that sample. The report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

An error tolerance level of plus or minus $10.00 was allowed in most cases where monetary values were involved, however, in cases where monetary values were generated by computer or system procedure a $0 tolerance level was applied in order to identify possible system errors.

Additionally, a $0 tolerance level was applied in instances were there appeared to be a consistent pattern of deviation from the Company's rates on file with the Colorado Division of Insurance.

This report contains information regarding exceptions to the Colorado Insurance Code. The examination included review of the following seven Company operations:

1. Advertising
2. Complaint Handling.
3. Agent Licensing.
4. Underwriting Practices.
5. Rate Application.
6. Claims Settlement Practices.
7. Financial Reporting

All unacceptable or non-complying practices may not have been discovered throughout the course of this examination. Additionally, findings may not be material to all areas which would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices.

This report should not be construed to endorse or discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted. Examination report recommendations which do not reference specific insurance laws, regulations, or bulletins are presented to encourage improvement of company practices and operations and ensure consumer protection.

Examination findings may result in administrative action by the Division of Insurance.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of seventeen issues, arising from the Company's apparent noncompliance with Colorado statutes and regulations concerning all title insurers authorized to transact title insurance business in Colorado. These seventeen issues fell into five of the seven categories of Company operations as follows:

Complaint Handling:
In the area of complaint handling, one compliance issue is addressed in this report. This issue arose from Colorado statutes and regulations which require insurers offering coverage in Colorado to adopt and implement procedures for addressing and responding to consumer complaints and requires all insurers to maintain a complete complaint register. With regard to this issue, it is recommended that the Company review its complaint handling procedures and amend those procedures to assure future compliance with applicable Colorado laws.

Underwriting Practices:
In the area of underwriting, seven (7) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements which must be followed whenever title policies are issued in Colorado. The incidence of noncompliance in the area of underwriting exhibits a frequency range between 10% and 67%. With regard to these underwriting practices, it is recommended that the Company review its underwriting procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all seven (7) issues.

Rate Application:
In the area of rating, five (5) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements which must be followed whenever title policies are issued in Colorado and whenever title insurers or the insurer's agents conduct real estate or loan closing and/or settlement service for Colorado consumers. The incidence of noncompliance in the area of rating demonstrates an error frequency between 4% and 85%. With regard to the five (5) compliance issues addressed in relation to the Company's rating practices, it is recommended that the Company review its rating manuals and procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all five (5) issues.

Claims Settlement Practices:
In the area of claims settlement practices, three (3) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claims checks, maintenance of records, timeliness of payments, accuracy of claim payment calculations, and delay of claims. The incidence of noncompliance in the area of claims practices shows a frequency range of error between 6% and 42%. Concerning the three (3) compliance issues encompassing Company claims practices, it is recommended that the Company review its claims handling procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all three (3) issues.

Financial Reporting:
In the area of financial reporting and other miscellaneous compliance issues, one compliance issues is addressed in this report. This issue arose from specific Colorado statutory and regulatory requirements requiring title insurers to file certain financial data and to provide annual statistical justification and data to support title insurance rates used in Colorado. With regard to this issue, it is recommended that the Company review its annual filing procedures and make the necessary changes to assure future compliance with applicable statutes and regulations.

PERTINENT FACTUAL FINDINGS

Market Conduct Examination Report
of
TRANSNATION TITLE
INSURANCE COMPANY

<u>PERTINENT FACTUAL FINDINGS</u>

Relating to

<u>COMPLAINT HANDLING PROCEDURES</u>

Issue A: Failure to maintain minimum standards in a record of written complaints.

Section 10-3-1104(1), C.R.S., requires all insurance companies operating in Colorado to provide for complaint handling procedures and provides that:

> (i) Failure to maintain complaint handling procedures: Failing of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph (I), "complaint" shall mean any written communication primarily expressing a grievance.

3 CCR 702-6(6-2-1) Attachment A promulgated pursuant to the authority of §§ 10-1-109, 10-3-1110, and 10-11-118, C.R.S., sets forth the minimum information required to be maintained by insurance companies in their respective complaint registers as follows:

Attachment A. Minimum Information Required in Complaint Record

Column A	Column B		Column C	Column D	Column E	Column F	Column G	Column H
Company Identification Number	Function Code	Reason Code	Line Type	Company Disposition after Complaint Receipt	Date Received	Date Closed	Insurance Department Complaint	State of Origin

Examination of the Company's complaint record effective for the period under examination demonstrated the Company was not in compliance with all of the requirements of 3 CCR 702-6(6-2-1). Specifically, Colorado Insurance Regulation 3 CCR 702-6(6-2-1), under Column H, the regulation specifically requires that "[t]he complaint record shall note the state from which the complaint originated. Ordinarily this will be the state of the residence of the complainant." The Company's Complaint Log, however, did not contain a column indicating of origin of the complaint.

Under Column G, the regulation requires complaints to be classified to indicate if the origin of the complaint was from the Colorado Division of Insurance or whether the complaint was received otherwise. The Company's complaint record did not include a column specifying whether complaints originated with the Division or not.

Under Column B, the regulation requires complaints to be classified by Company function (i.e. underwriting, marketing and sales, claims, policyholder services). Although the Company's Complaint Log contained a column entitled the "nature of the complaint" or a reason column, the Company's Complaint Log did not included a Column B function code as such is identified and defined by 3 CCR 702-6(6-2-1).

Under Column C, the regulation requires company complaint registers to indicate the line type. Complaints are to be classified according to the line of insurance involved. Although title insurers are only authorized to write title insurance in Colorado and, therefore, all complaints would most likely be classified as title insurance line type complaints, the Company's complaint register should have included a column indicating the line type, however, the Company's complaint log did not.

In addition the Company's complaint register was void of any complaints and the Company indicated that it did not have any complaints for 1999. Despite the Company's contention that it did not receive any complaints for the calendar year under examination January 1, 1999 to December 31, 1999, a review of complaints received against the Company by the Colorado Division of Insurance demonstrated that the Division received two (2) complaints against the Company during the period under examination. Further review of the Division's records indicated that the Company had knowledge of the complaints. Specifically, in the course of handling the complaints the Colorado Division of Insurance forwarded the complaints to the Company and the Company subsequently acknowledged receipt of the complaints during the period under examination. The Company's failure to maintain a complete record of all written complaints received by the Company is not in compliance with Colorado law.

Recommendation #1:

Within 30 days, the Company should demonstrate why it should not be considered in violation of the requirements set forth in 3 CCR 702-6(6-2-1) adopted pursuant to the authority of §§ 10-1-109, 10-3-1110, and 10-11-118,C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its complaint register to include the omitted information and that the Company's complaint register is in compliance with the minimal requirements of the Colorado regulation.

PERTINENT FACTUAL FINDINGS

for

UNDERWRITING PRACTICES

Issue B: Failure to provide written notification to prospective insureds of the Company's general requirements for the deletion of the standard exception or exclusion to coverage related to unfiled mechanic's or materialman's liens and/or the availability of mandatory GAP coverage.

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1)(VII), adopted in part pursuant to the authority granted under §§10-1-109 and 10-3-1110, C.R.S., states in pertinent parts:

> (C) Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed.
>
> (L) Each title entity shall notify in writing every prospective insured in an owner's title insurance policy for a single family residence (including a condominium or townhouse unit) (i) of that title entity's general requirements for the deletion of an exception or exclusion to coverage relating to unfiled mechanics or materialman's liens, except when said coverage or insurance is extended to the insured under the terms of the policy and (ii) of the circumstances described in Paragraph C of Article VII of these Regulations, under which circumstances the title insurer is responsible for all matters which appear of record prior to the time of recording (commonly referred to as "Gap Coverage").

The Company's standard printed schedule B policy exceptions contain the following general exclusionary language for all unfiled mechanic or materialman's liens:

> This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:
>
> 4 Any lien, or right to a lien, for services, labor or material heretofore or hereinafter furnished, imposed by law and not shown by the public records.

A review of the Company's underwriting and rating manuals demonstrated that, during the period under examination, the Company offered coverage for unfiled mechanic's and materialman's liens. Such coverage was available through the Company via deletion of the printed exceptions, an extended coverage endorsement, or by using Company endorsement 110.1 or 110.2 which insured over particular named exceptions. In addition, a review of Company underwriting and escrow files demonstrated that, during the period under examination, the Company conducted several closings in coordination with the issuance of title insurance policies insuring title to single family dwellings. As indicated by the Regulation cited above, whenever a title insurer or its agent conducts a closing in relation to a title policy issued and is responsible for recording the documents resulting from the real estate transaction, Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VII)(L) mandates coverage for all matters appearing of record prior to the time of recording (GAP coverage).

The following sample demonstrated that, although the Company offered coverage for unfiled mechanic's and materialman's liens and was often responsible for the regulatory mandated GAP coverage, the Company failed to make the appropriate written disclosures regarding its general requirements for deletion of the Company's standard exception for unfiled mechanic's or materialman's liens and/or failed to provide notice of the existence of GAP coverage where such notices were required:

TITLE POLICIES ISSUED
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
44,376	100	41	41%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .23% of all title policies issued by the Company in Colorado during the period under examination, showed 41 exceptions (41% of the sample) wherein the Company issued title insurance policies providing owner's coverage for risks associated with the title transfer of single family residences, condominiums or townhouses in Colorado. Each policy excepted coverage for unfiled mechanics or materialman's liens and/or GAP coverage. Coverage for unfiled mechanic's or materialman's liens was available through the Company by endorsement and, as the Company or its agent conducted the closing in each instance, GAP coverage was mandated by law. However, in each instance the Company was unable to provide documentation that it provided its prospective insureds with written notice regarding the availability and/or prerequisites of such coverages as required by 3 CCR 702-3 (3-5-1)(VII)(L).

The 41% error frequency reported here is augmented by the fact that only 41 of the 100 policies reviewed were subject to this standard and required the written disclosure pertaining to the unfiled mechanic's lien and GAP coverages. Specifically, only 41 of the 100 files reviewed were owner's title insurance policies insuring single family residences in which the Company, or its agent, conducted the real estate closing and was responsible for recording the documents of conveyance and did not have Owner's Extended Coverage or an endorsement removing the general exception or exclusion for unfiled mechanic or materialman's liens and GAP coverage. Therefore, the written disclosures were only required in 41 of the 100 files reviewed. The Company failed to make the requisite disclosures in all 41 files which demonstrated that, whenever the written disclosures were required, the Company's error frequency was 100%.

Recommendation #2:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(a) and (1)(a)(I), C.R.S., and 3 CCR 702-3 (3-5-1)(VII)(C) and (L). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines, agency agreements or other Company procedures necessary to implement the requisite change so that those procedures and guidelines include a requirement that will assure the Company will provide prospective insureds with written notification of the Company's general requirements for the deletion of the Company's general exception or exclusion to coverage for unfiled mechanic's liens and GAP coverage.

In addition, the Company should be required to perform a self audit of all claims denied due, in whole or in part, to the general exception or exclusion contained in the title policy for unfiled mechanic or materialman's liens. The self audit should cover a period from January 1, 1999 to present. After identifying the target denials, the Company should be required to accept liability for all claims identified by the audit in which the Company failed to provide the requisite written notice.

Issue C: Misrepresenting the benefits, advantages, conditions or terms of insurance policies by omitting applicable endorsements.

Section 10-3-1104(1), C.R.S. defines certain unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; . . .

A review of the following sample demonstrated that, whenever the Company issued a title insurance policy in Colorado during the period under examination, the Company failed to identify, itemize or list policy endorsements in a declarations page or otherwise include such information within the written terms of title insurance policies issued.

TITLE POLICIES ISSUED
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
44,376	100	68	68%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .23% of all title policies issued by the Company in Colorado during the period under examination, showed 68 exceptions (68% of the sample) wherein the Company omitted applicable endorsements. In all 68 exceptions the Company issued title insurance policies without itemizing the inclusive endorsements on a policy declaration page or otherwise disclosing such information within the written terms of the title insurance policy issued.

Furthermore, a review of the Company's policy forms demonstrated that only 1 of the 7 most common title insurance and title guarantee policy forms used by the Company in Colorado during the period under examination contained a declarations page or policy jacket which included a section for itemizing endorsements. Specifically, the policy jacket for the ALTA Short Form Residential Loan Policy, issued by the Company to lenders in coordination with permanent loans secured by residential property of one to four family dwellings, contained a checklist to indicate endorsements incorporated into the policy issued.

Other than the short form discussed above, the Company's routine method of notifying prospective insureds of the endorsements requested by an insured for inclusion in the prospective title insurance policy was to provide a statement of charges at the top of the respective insured/applicant's initial commitment papers.

Upon issuing the title insurance policy the terms of the last update of the commitment were incorporated into the title policy, however, the Company omitted the listing of inclusive endorsements that appeared within the terms of the original commitment papers. Therefore, upon issuance of the policy, any endorsements or riders were not listed or otherwise itemized within the terms of the title policy issued. In addition, the only indication that an endorsement or rider amended a particular policy was application of a Company practice requiring the issuing agent to place a copy of the endorsement or rider behind the Company's copy of the title policy maintained in the underwriting file. The endorsements were not otherwise "attached" to the policy and the pages of the policy were not numbered (i.e. 1 of 1) to identify the length of the policy or otherwise identify the existence of any endorsements or riders.

Recommendation #3:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(a)(I), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its policy forms and endorsements and underwriting guidelines and procedures and any other requisite Company operations so that all title policies issued by the Company incorporate a listing of any endorsements and/or riders on the policy declaration page or within the terms of the policy as to all future policies issued by the Company.

Issue D: Failing to adopt, print, and/or make available to the public complying schedules of rates, fees and charges for regularly issued title insurance policies and/or regularly rendered closing and settlement services.

Colorado Insurance Regulations 3 CCR 702-3(3-5-1(IV)(A)-(C) and (F)) adopted pursuant in part to the authority granted under §§ 10-1-109, 10-3-110, 10-11-118, and 10-4-401 et seq., provides in pertinent parts:

> IV. SCHEDULE OF RATES, FEES AND CHARGES - TITLE INSURANCE POLICIES
>
> A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees.
>
> B. As long as it remains effective, such schedule shall be made readily available to the public and prominently displayed in a public place in each of the offices of the title insurer or its agent in the particular county to which they relate. On individual request, copies of such schedules shall be furnished to the public.
>
> C. Such schedule shall show the entire charge to the public for each type of title policy regularly issued by the insurer, either by a statement of the particular charge for each type of policy in given amounts of coverage, or by a statement of the charge per unit of the amount of coverage, or a combination of the two.
>
> F. Such schedule shall be printed in type no smaller than ten (10) point and shall be dated to show the date it becomes effective.

Colorado Insurance Regulations 3 CCR 702-3(3-5-1(V)(A), (B), and (E)) provide:

> V. SCHEDULE OF FEES AND CHARGES - CLOSING AND SETTLEMENT SERVICES
>
> A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services.
>
> B. Such a schedule shall show the entire charge to the public for each type of closing and settlement service regularly rendered by the title entity, either by a statement for each type in given amounts or by statement of the charge per unit of the amount of the transaction, or a combination of the two.

E. Such schedule shall be printed in type no smaller than ten (10) point and shall be dated to show the date it becomes effective.

Upon inception of the examination, the examiners requested the Company to produce any and all agency specific rate manuals and/or agency or county specific rate manuals, pamphlets, workbooks, or other written material pertaining to Company rates and fees. In response to that request, the Company produced five (5) separate notebooks containing rates and rating rules for agencies located in eleven (11) Colorado Counties (Adams, Arapahoe, Denver, Douglas, Jackson, Jefferson, Larimer, Park, Pueblo, Routt and Weld). These notebooks were produced with the intent and in a fashion suitable for public dissemination in compliance with 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I))(copy attached). The notebooks also contained copies of abbreviated rate cards made available to the public as a quick reference to Company rates and charges in the respective county.

Although the material provided by the Company demonstrated compliance for agencies located in the eleven (11) enumerated counties, the Company wrote and/or solicited title insurance business in other Colorado counties either through direct operations or independent agents. The Company's failure to produce any material for operations located in other Colorado counties demonstrated noncompliance with Colorado laws requiring title insurers offering coverage in Colorado to adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies and regularly rendered closing and settlement services.

Additionally, in response to the examiners' request for copies of any and all agency specific rate manuals and/or agency or county specific rate manuals, pamphlets, workbooks, or other written material pertaining to Company rates and fees, the Company produced five (5) additional rate cards covering six (6) additional Colorado Counties (Clear Creek, Elbert, Gilpin, Mesa, Morgan, and Yuma). As in the case of the notebooks discussed above, these rate cards were made available to the public as a quick reference to Company rates and charges in the respective county and were produced with the intent and in a fashion suitable for public dissemination in compliance with 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)).

The Company's Rate Cards did not comply with the requirement of the law. Specifically, the schedule of rates set forth in the Rate Card for Yuma County, Clear Creek, Gilpin, Mesa, and Weld Counties were regularly disseminated to the public in accordance with 3 CCR 702-3(3-5-1), however, the rate cards were printed in a type smaller then ten (10) point.

Furthermore, the rate cards provided by the Company for these five counties did not comply with the requirements of 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)) as the rate cards did not show the entire charge for each type of policy issued by the Company.

Finally, based on the fact that the Company failed to produce a public information schedule of rates and fees a majority of Colorado counties, the examiners requested the Company to provide copies of all materials printed by the Company and made available to the public effective in the remainder of Colorado counties where the Company maintained operations and/or wrote, or solicited title insurance business. The material provided was to be as comprehensive as the binder's previously produced and were to included rates, fees, and charges for endorsements, guarantees and other forms of coverage. The Company indicated such material was not available demonstrating noncompliance with the requirements of the cited regulations.

Recommendation #4:

Within 30 days, the Company should demonstrate why it should not be considered in violation of the cited provisions of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has printed and made available to the public a schedule of rates, fees and charges for regularly issued title insurance policies and regularly rendered closing and settlement services. Such schedules should include information pertaining to endorsements, guarantees and other forms of insurance coverages and should contain copies of the forms applicable to such fees. In addition, the Company should be required to review the information contained in the new schedules and verify that all rates, fees, and charges contained therein have been filed with the Division in accordance with the 3 CCR 702-3(3-5-1) and §§10-4-401 et seq., C.R.S.

The Company should also be required to amend its existing Notebooks and Rate Cards so that the Company's schedule of rates and fees are made available to the public in a form that complies with the requirements of the law.

Issue E: Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers.

Sections 10-3-1104(1)(a) and (1)(a)(I), C.R.S. define an unfair or deceptive trade practice in the business of insurance as:

> (a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:
>
> (I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1)(VII), adopted in part pursuant to the authority granted under §§10-1-109 and 10-3-1110, C.R.S., states:

> (G) No title entity shall provide closing and settlement services without receiving written instructions from all necessary parties.

The following sample demonstrated that, in some instances, the Company or its agent provided closing and/or settlement service in Colorado during the period under examination without obtaining the requisite written closing instructions signed by all necessary parties.

TITLE POLICIES ISSUED
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
44,376	100	63	63%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .23% of all title policies issued by the Company in Colorado during the period under examination, showed 63 exceptions (63% of the sample) wherein the Company or its agent provided closing and/or settlement services for Colorado consumers without receiving written closing instructions from all necessary parties.

Nine (9) of the 63 reported files did not contain any form of closing instructions. Of these 9 files, 6 files were real estate and/or loan closings for sales transactions and 3 were loan closings for refinance transactions.

Three (3) of the 63 reported files contained closing instructions for a real estate closing, however, the closing instructions were not signed by the purchaser/borrower. Of these 3 files, 1 file was for refinance transactions.

Seven (7) of the 63 reported files contained closing instructions, however, the closing instructions were signed by the issuing title agent instead of the lender/ mortgagee, purchaser/mortgagor, the seller, and/or the broker or property agent or realtor.

Forty-four (44) of the 63 reported files were loan closings for refinance or land transfer transactions. These 44 files contained some form of closing instructions, however, none of the files contained signed closing instructions from the respective lender. Five (5) of these 44 files were loan closings for refinance transactions. None of the five (5) refinance transactions files contained closing instructions or directives from the borrower.

Recommendation #5:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(a) and (1)(a)(I), C.R.S., and 3 CCR 702-3 (3-5-1)(VII)(G). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines, agency agreements or other Company operations necessary to assure that the Company and its agents will obtain written instructions from all necessary parties whenever the Company or its agents perform closing and settlement services in Colorado.

Issue F: Failure to follow Company underwriting procedures and/or guidelines and/or discriminatory underwriting practices.

Section 10-3-1104(1)(f)(II), C.R.S. defines an unfair business practice in the business of insurance as:

> (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

TITLE POLICIES ISSUED
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
44,376	100	62	62%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .23% of all title policies issued by the Company in Colorado during the period under examination showed 62 exceptions (62% of the sample) wherein the Company failed to follow its own underwriting guidelines and/or engaged in apparent discriminatory underwriting practices.

Some of the files reviewed contained more than one underwriting error, however, to maintain sample integrity, each file was considered as a singular exception regardless of the total errors contained in the file. Thus, the exception frequency reported above was 62%, however the 100 files reviewed contained a total of 83 errors wherein the company issued title polices without following the Company's underwriting guidelines and/or engaged in discriminatory underwriting practices. Forty-five errors resulted from the issuing entity's failure to obtain underwriting approval prior to issuing certain endorsements. The remaining 38 errors arose from the Company's failure to delete standard exceptions from title policies in accordance with Company underwriting /rating guidelines. These findings were as follows:

<u>Failing to Follow Underwriting Guidelines:</u>

Among other restrictions, the Company's Colorado Examiner's Manual (underwriting and rating manual) required Company agents to obtain underwriting approval prior to issuing endorsements 100.30 (mineral endorsement), 115.2 (PUD endorsement), and/or 130 (Owner's Extra Protection).

For example, prior to issuing the Form 100.30 endorsement, the Company's underwriting/rating manual required:

APPROVAL

> After approval of the project by the Division Manager, Division Legal Department and Home Office Legal Department, the county personnel may commit to the coverage as to such a project.
>
> On individual tracts, the county should submit such requests to the Division Legal Department. Where unusual risk is apparent, additional evaluation by Home Office Underwriting and the Chief Operating Officer may be indicated.

LAND AMERICA EXAMINER'S MANUAL FOR TRANSAMERICA, LAWYER'S & TRANSNATION TITLE INSURANCE COMPANY'S, Endorsements Chapter at p. 211-3 (ed. effective 9/1/83).

Twenty (20) of the 62 reported files contained exceptions in which the Company issued a Form 100.30 endorsement without obtaining the requisite prior approval from any of the Company representatives enumerated by the rule.

In addition, the Company's Colorado underwriting and rating manual contained the following rule regarding prior approval and issuance of endorsement 115.2:

> County Chief Title Officer or other designated county authority.

LAND AMERICA EXAMINER'S MANUAL FOR TRANSAMERICA, LAWYER'S & TRANSNATION TITLE INSURANCE COMPANY'S, Endorsements Chapter at p. 252-1(ed. effective 9/1/83).

Ten (10) of the 62 reported files contained exceptions in which the Company issued a Form 115.2 endorsement without obtaining the requisite prior approval from any of the Company representatives enumerated by the rule.

Prior to issuing a form 130 endorsement, the Company's Colorado underwriting and rating manual required:

APPROVAL

> County Manger or designated county authority.

LAND AMERICA EXAMINER'S MANUAL FOR TRANSAMERICA, LAWYER'S & TRANSNATION TITLE INSURANCE COMPANY'S, Endorsements Chapter at p. 263-1 (ed. effective 7/1/85).

Eighteen (18) of the 62 reported files contained exceptions in which the Company issued the Form 130 Extra Protection endorsement without obtaining the requisite prior approval from any of the Company representatives enumerated by the rule.

In addition to the prior approval guidelines discussed above, the Company's Colorado Examiner's Manual (underwriting and rating manual) set forth certain requirements pertaining to reissue discounts and multiple parcel land transactions. Specifically, the Company's underwriting/rating manual effective in Colorado during the period under examination required Company agents to obtain a statement regarding parcel values prior to allowing a reissue discount in conjunction with issuing title policies insuring title to land transactions wherein the land transfer involved multiple parcels. The Company's underwriting/rating manual required:

> Where a prior owner's or leasehold policy has insured more than one parcel, and no segregation of liability has been made as to each parcel, a statement from the owner setting forth the value of each parcel, as of the date of the prior policy, should be obtained, the aggregate of which would equal the liability of the prior policy. Then, the short term rate an any particular parcel will be 50% of the amount set forth in the basic schedule of rates computed at the dollar value of that parcel as furnished in the owner's statement, the increase if any to be charged as set forth above.

Transnation Title Insurance Company, MULTIPLE COUNTY RATE FILING, Short Term Reissue (ed. effective 3/5/96); **Transnation Title Insurance Company, COUNTY SPECIFIC RATE FILING FOR COUNTIES OF ROUTT & JACKSON, §A, Title 2, Articles 4.4, 5.1a, and 6.1 Short Term Reissue (ed. effective 12/28/90).**

In 2 of the 62 reported files the Company applied a short term reissue discount against the base rate premium charges for large commercial transactions wherein the purchasers were consolidating divided interests in land. The reissue discounts were allowed based upon prior title insurance policies issued to insure title to various parcels of land. Although a short term discount was applied against the base rate premium for each of these policies, the issuing entity failed to obtain a statement regarding parcel values as required by operation of Company rule.

Discriminatory Underwriting Practices:

During the period under examination the Company's underwriting/rating rule regarding deletion of the standard preprinted exceptions stated:

Article 9.2 Deletion of Printed Exceptions

Mechanics Lien Protection

Completed Improvements	NC
Deletion	50% OF BASIC
Modified Language	30% OF BASIC
Survey Protection	NC

Transnation Title Insurance Company, SPECIFIC CHARGE PROVISIONS AND VARIANCES FOR COUNTIES, §A, Article 9.2(ed. effective 4/10/97).

The 5 standard preprinted Schedule B exceptions the Company used in Colorado during the period under examination were:

This policy does not insure against loss or damage by reason of the following:

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Taxes and assessments for the year ________, not yet due or payable.

Transnation Title Insurance Company, ALTA LOAN POLICY, (ed. 10/17/92)

Although the Company routinely deleted some or all of the standard preprinted exceptions from ALTA loan policies issued by the Company in Colorado during the period under examination, the Company's underwriting and rating rules did not adequately address deletion of all the cited standard exceptions. Specifically, the Company's rate filings and accompanying underwriting guidelines only established peripheral circumstances and charges for deletion of standard exception 3 (survey protection) and exception 4 (unfiled mechanics lien protection).

Aside from the information provided in the Company's rule cited above, the Company did not have any underwriting guidelines that established identifiable parameters, criteria, or other articulable standards for determining when or under what circumstances the standard exceptions should be deleted from lender's policies issued by the Company.

Similarly, the Company's rate filings and underwriting guidelines effective for Colorado during the period under examination indicated that, provided underwriting guidelines were satisfied preprinted exceptions 1-4 would be deleted from owner's policies at no charge.

The 4 standard preprinted Schedule B exceptions the Company used for owner's policies issued in Colorado during the period under examination were:

This policy does not insure against loss or damage by reason of the following:

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.

3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

Transnation Title Insurance Company, STANDARD OWNERS POLICY, (ed. 10/17/92)

Notwithstanding the filed rate, a review of the Company's underwriting manuals demonstrated that the Company did not have any underwriting guidelines which established identifiable parameters, criteria, or other articulable standards for determining when or under what circumstances the standard exceptions should be deleted from owner's policies issued by the Company.

The standard preprinted exceptions contained in both owner's and lender's title insurance policies are among the broadest exclusions contained in title insurance products. Deletion of the preprinted exceptions provides a significant increase in coverage. Although the Company's rate filings effective in Colorado during the period of examination indicated that, provided underwriting guidelines were satisfied, the exceptions could be deleted at no charge, a review of the Company's underwriting guidelines demonstrated the Company did not possess any identifiable parameters, criteria, or other articulable standards for determining when the standard exceptions should be deleted.

The Company's failure to adopt and/or implement articulable underwriting guidelines and/or standards for the deletion of the standard exceptions under both lender and owner title policies issued by the Company permitted disparate treatment among Colorado insureds. The potential for this disparate treatment was augmented by the fact that the Company indicated the issuing entity would not make an attempt to delete the standard exceptions under either an owner's or lender's title policy unless the insured requested deletion of the exceptions. Thus, the onus of determining the availability of the coverage extended by deleting the exceptions was placed on the insured consumer, often resulting in disparate coverage among similarly situated risks. Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever is an unfair business practice as defined by §10-3-1104(1)(f)(II), C.R.S.

Given the Company's stated practice of only deleting the standard exceptions and extending the resultant additional coverage when such coverage is requested by the prospective insured, the examiners requested the Company to outline the steps taken to underwrite the exceptions away for each file reported here and to demonstrate that the Company made a reasonable attempt to underwrite the exceptions away for these policy files commensurate with other policies in which the exceptions were deleted for no charge. Furthermore, the Company was asked to identify the underwriting guidelines for deletion of the exceptions and indicate why, on the basis of those guidelines, the exceptions were not deleted from each of the policies reported here at no additional charge in accordance with the Company's filed rates and/or underwriting manuals and guidelines. The Company was unable to provide the requested information and/or justify its failure to delete the standard exceptions from these policies for no additional charge in accordance with the Company's underwriting and/or rating manuals and guidelines.

Forty-eight of the 64 reported files contained owner's policies wherein the Company failed to delete one or more of the standard exceptions in compliance with the Company's rate manual. The insureds in these 48 instances were charged premiums commensurate with similar risks located in the respective county where the property for which the Company insured title was located; however, since the Company failed to delete any of the standard exceptions, these 48 insureds incurred a significant reduction in coverage. The files were not documented to indicate why the exceptions were not deleted and, since the Company did not have any underwriting guidelines setting forth the requirements and preconditions for deletion of the exceptions, the examiners were unable to ascertain compliance with Company procedures and Colorado law in all 48 instances.

Sixteen of the 64 reported files contained lender's policies wherein the Company failed to delete any of the standard exceptions in compliance with the Company's rate manual. The insureds in these 16 instances were charged premiums commensurate with similar risks located in the respective county where the property for which the Company insured title was located; however, since the Company failed to delete any of the standard exceptions, these 16 insureds incurred a significant reduction in coverage. The files were not documented to indicate why the exceptions were not deleted and, since the Company did not have any underwriting guidelines setting forth the requirements and preconditions for deletion of the exceptions, the examiners were unable to ascertain compliance with Company procedures and Colorado law in all 16 instances.

Recommendation #6:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(f)(II), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has either amended its underwriting rules to comport with the Company's practices or provide the Division with information demonstrating the Company has implemented procedures which will assure that all title policies issued by the Company will be issued in Compliance with written Company underwriting and rating rules, procedures, guidelines and/or standards.

With regard to discriminatory underwriting practices and deletion of standard exceptions, the Company should be required provide evidence demonstrating that the Company has adopted underwriting guidelines which set forth clear, articulable underwriting standards which define and identify when and under what circumstances the standard preprinted exceptions may be deleted under both owner's and lender's coverages. The guidelines should be accompanied by a statement indicating the Company will distribute the guidelines to all persons and entities involved in the underwriting process and assurances that those guidelines will be followed and applied equitably whenever the Company issues a title insurance policy in Colorado.

Issue G: Issuing title insurance policies without obtaining a certificate of taxes due.

Section 10-11-122, C.R.S. provides:

> (3) Before issuing any title insurance policy, unless the proposed insured provides written instructions to the contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due or other equivalent documentation from the county treasurer or the county treasurer's authorized agent.

TITLE POLICIES ISSUED
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
44,376	100	10	10%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .23% of all title policies issued by the Company in Colorado during the period under examination, showed 10 exceptions (10% of the sample) wherein the Company issued title insurance policies without first obtaining a certificate of taxes due or other equivalent documentation. None of the files reported contained information demonstrating that the respective insured had provided written instructions waiving the requirement.

Recommendation #7:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-11-122(3), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has adopted and implemented procedures which will assure that, whenever the Company issues a title policy in Colorado, the Company or its agent will obtain a certificate of taxes due or other equivalent documentation for the subject property of which title is to be insured.

Issue H: Making, issuing, and/or circulating an estimate, circular, statement and or sales presentation which misrepresents the benefits, advantages, conditions, and/or terms of title insurance policies.

Section 10-3-1104(1)(a)(I) and (b), C.R.S. define an unfair business practice in the business of insurance as:

(a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

(b) False information and advertising generally: Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

Colorado Insurance Regulations 3 CCR 702-3(3-5-1(IV)(A)-(G)) provide:

IV. SCHEDULE OF RATES, FEES AND CHARGES - TITLE INSURANCE POLICIES

A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees.

B. As long as it remains effective, such schedule shall be made readily available to the public and prominently displayed in a public place in each of the offices of the title insurer or its agent in the particular county to which they relate. On individual request, copies of such schedules shall be furnished to the public.

C. Such schedule shall show the entire charge to the public for each type of title policy regularly issued by the insurer, either by a statement of the particular charge for each type of policy in given amounts of coverage, or by a statement of the charge per unit of the amount of coverage, or a combination of the two.

D. Such schedule may include a statement that additional charges are made when unusual conditions of title are encountered or when special or unusual risks are insured against and that special charges are made for special services rendered in connection with the issuance of a title policy.

E. Such schedule may provide for different rates, fees or charges for title policies covering property in different counties or separate schedules may be adopted for title policies covering property in different counties.

F. Such schedule shall be printed in type no smaller than ten (10) point and shall be dated to show the date it becomes effective.

G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans.

Colorado Insurance Regulations 3 CCR 702-3(3-5-1(V)(A)-(F)) provide:

V. SCHEDULE OF FEES AND CHARGES - CLOSING AND SETTLEMENT SERVICES

A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services.

B. Such a schedule shall show the entire charge to the public for each type of closing and settlement service regularly rendered by the title entity, either by a statement for each type in given amounts or by statement of the charge per unit of the amount of the transaction, or a combination of the two.

C. Such schedule may include a statement that additional charges are made when usual conditions are encountered.

D. Such schedule may provide for different fees and charges for closing and settlement services concerning property in different counties or separate schedules may be adopted for closing and settlement services concerning property in different counties.

E. Such schedule shall be printed in type no smaller than ten (10) point and shall be dated to show the date it becomes effective.

F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans.

Upon inception of the examination, the examiners requested the Company to produce any and all agency specific rate manuals and/or agency or county specific rate manuals, pamphlets, workbooks, or other written material pertaining to Company rates and fees. In response to that request, the Company produced five (5) separate notebooks containing rates and rating rules for agencies located in eleven (11) Colorado Counties (Adams, Arapahoe, Denver, Douglas, Jackson, Jefferson, Larimer, Park, Pueblo, Routt and Weld). These notebooks were produced in a fashion suitable for public dissemination with the intent to comply with the publication requirements of 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)). The notebooks also contained copies of abbreviated rate cards made available to the public as a quick reference to Company rates and charges in the respective county.

Additionally, in response to the examiners' request for copies of any and all agency specific rate manuals and/or agency or county specific rate manuals, pamphlets, workbooks, or other written material pertaining to Company rates and fees, the Company produced five (5) additional rate cards covering six (6) additional Colorado Counties (Clear Creek, Elbert, Gilpin, Mesa, Morgan, and Yuma). As in the case of the notebooks discussed above, these rate cards were made available to the public as a quick reference to Company rates and charges in the respective county and were produced in a fashion suitable for public dissemination with the intent to comply with the publication requirements of 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)).

Close review of the notebooks and rate cards disclosed that the Company was not in compliance with Colorado law. Specifically, some of the printed material contained statements, omissions, and/or representations that misrepresented the benefit, advantages and/or terms of title insurance policies. The errors were as follows:

Ancillary Fees:

Close review of the Notebooks and Rate Cards disclosed that the Company was not in compliance with Colorado law. Specifically, the schedule of fees and charges for closing and settlement services set forth in the Notebooks and Rate Cards contained a list of certain ancillary charges, however, several of the ancillary charges misrepresented the Company's schedule of fees on file with the Colorado Division of Insurance.

One of the most comprehensive list of ancillary fees was a list of charges assessed for closings conducted in Larimer County. These ancillary charges were as follows:

<u>Ancillary Fees:</u>

Tax Information Services (including county certification)	$15.00
Overnight Courier Services	$15.00
Release Facilitation	$15.00
Document Preparation Charge	$ 5.00
Cashier's Check	$ 5.00
Wires Out	$15.00

Commonwealth Land Title Insurance Company, RATE AND SETTLEMENT CHARGES FOR LARIMER COUNTY. P.1, (ed. 3/5/96).

Notwithstanding the information regarding ancillary fees contained in all of the Company's public information Notebooks as demonstrated by the above cited example, the Company's 1988 Base Rate Manual, effective in Colorado during the period under examination provided:

<u>OUT OF POCKET EXPENSE REIMBURSEMENTS</u>	<u>COST</u>
(Including but not limited to)	
Special postage or freight	
Long distance calls	
Recordings, tax certificates, and status reports	
Bank Fees for wires, certified checks, and cashiers checks	
Document preparation by outside attorney	

Transnation Title Insurance Company, 1988 BASE RATE FILING, §A, Title 2, Article 2.5 (ed. effective 8/1/88).

The cited Company rating rule indicated that the charge for miscellaneous expenses accruing ancillary to any real estate and/or loan closings conducted by the Company was the actual cost of the given ancillary expense. Simply stated, the rule provided that, while there was no additional fee associated with the enumerated costs and services, the Company passed the actual cost or expense of the ancillary charge to the customer. Contrary to the "out of pocket expense reimbursement rule" cited above, the ancillary charges set forth in the Company's Notebooks and Rate cards included both the actual cost of the expense and a surcharge or handling fee. For example, when the examiners questioned the Company's practice of charging a flat fee for recording releases the Company indicated:

> The Company views the facilitation of releasing underlying loans, which can involve lengthy and multiple follow-up contacts, and possible execution title company releases, and indemnification of the public trustees for lost or unavailable notes, as a service that requires charges.

Likewise, when questioned about its policy of charging a flat fee for tax certificates the Company responded:

> The Company has always viewed our provisions of tax information as a comprehensive service including the acquisition of county certified information and the delivery of that information. Outside vendor, software, and network connections, additional handling and processing of files and delivery requires that our changes go beyond the actual county cost for a certification.

The Company also indicated that it charged a handling fee for express mail/ courier charges which occur incident to conducting closings. Specifically, when questioned about its policy of charging flat fees for express mail/courier services the Company indicated:

> The Company has always viewed our provisions of special or overnight mail/courier services as service inclusive of express vendor fees, equipment, software, and supplies together with a charge for handling.

The Company's practice of charging more than the actual costs incurred for recording releases, obtaining tax certificates, and/or conducting express mailings was in direct conflict with the Company's filed fee rule regarding out of pocket expenses for ancillary charges.

Mesa County Rate Card:

The Mesa County schedule of rates printed in the Rate Card omitted any reference to or listing of common, significant premium discounts available through the Company in Colorado during 1999. These discounts included but were not limited to the following:

a. Streamline Bundled Loan Discount (50% off the base rate and significant savings on bundled endorsement package);

b. Refinance Discount (50% off the base rate for first 5 years and 40% off for the sixth year).

3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)) charge title insurers with adopting, printing, and making available to the public a schedule of rates, fees, and charges for regularly issued title insurance policies including guarantees and other forms of title insurance coverages. The Company's Rate Card effective during the period under examination for Mesa County was the only such schedule available to the public in that county and was produced with the intent to comply with the publication requirements of 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)). Omission of pertinent, common discounts in the Company's publicly disseminated schedule of rates, fees, and charges appears to misrepresent the terms, advantages, and/or conditions of the Company's title insurance policies.

The Rate Card also omitted any reference or listing of title guarantee and/or limited liability loan products offered by the Company. Although limiting coverage, these title products often produce significant savings to consumers in refinance transactions.

In addition, contrary to the Company's 1988 Base Rate Filing effective in Colorado during 1999, the Rate Card displayed premium charges for coverage in excess of $50,000 in dollars and cents. The Company's 1988 Base Rate Filing contained a rating rule stating that all premium charges will be rounded up to the next whole dollar.

Elbert County Rate Card:

The Elbert County schedule of rates printed in the Rate Card omitted any reference to or listing of common, significant premium discounts available through the Company in Colorado during 1999. These discounts included but were not limited to the following:

a. Streamline Bundled Loan Discount (50% off the base rate and significant savings on bundled endorsement package);
b. Refinance Discount (50% off the base rate for first 5 years and 40% off for the sixth year).

c. Short term reissue rate (50% for policies issued within 0-3 years of prior coverage).

3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)) charge title insurers with adopting, printing, and making available to the public a schedule of rates, fees, and charges for regularly issued title insurance policies including guarantees and other forms of title insurance coverages. The Company's Rate Card effective during the period under examination for Elbert County was the only such schedule available to the public in that county and was produced with the intent to comply with the publication requirements of 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)). Omission of pertinent, common discounts in the Company's publicly disseminated schedule of rates, fees, and charges appears to misrepresent the terms, advantages, and/or conditions of the Company's title insurance policies.

The Rate Card also omitted any reference or listing of title guarantee and/or limited liability loan products offered by the Company. Although limiting coverage, these products often produce significant savings to consumers in refinance transactions.

Equally, the Elbert County Rate Card omitted any listing or reference to concurrent loan discount rates available through the Company. Again, concurrent lender discount rates afford considerable savings in title insurance

Contrary to the Company's 1988 Base Rate Manual effective in Colorado during 1999, the Elbert County Rate Card displayed premium charges for construction loan discount rates in dollars and cents. The Company's 1988 Base Rate filing contained a rating rule stating that all premium charges will be rounded up to the next whole dollar.

Finally, the schedule of rates printed in the Rate Card in the front of the manual contained a rate schedule which deviated from the Company's filed rates for Elbert County. Specifically, the premium charges set forth in the Rate Card for $75,000 in coverage and above were $1.00 lower than the filed rates across the board.

<u>Morgan County Rate Card:</u>

The Morgan County schedule of rates printed in the Rate Card omitted any reference to or listing of common, significant premium discounts available through the Company in Colorado during 1999. These discounts included but were not limited to the following:

a. Streamline Bundled Loan Discount (50% off the base rate and significant savings on bundled endorsement package);
b. Refinance Discount (50% off the base rate for first 5 years and 40% off for the sixth year).

3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)) charge title insurers with adopting, printing, and making available to the public a schedule of rates, fees, and charges for regularly issued title

insurance policies including guarantees and other forms of title insurance coverages. The Company's Rate Card effective during the period under examination for Morgan County was the only such schedule available to the public in that county and was produced with the intent to comply with the publication requirements of 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)). Omission of pertinent, common discounts in the Company's publicly disseminated schedule of rates, fees, and charges appears to misrepresent the terms, advantages, and/or conditions of the Company's title insurance policies.

The Rate Card also omitted any reference or listing of title guarantee and/or limited liability loan products offered by the Company. Although limiting coverage, these products can produce significant savings to consumers in refinance transactions.

The schedule of rates printed in the Rate Card contained a rate schedule that deviated from the Company's filed rates for Morgan County. Specifically, beginning at $156,000 in coverage the premium charges set forth in the Rate Card were $1.00 higher than the filed rates across the board.

Clear Creek/Gilpin Counties Rate Card:

The rate card indicated that the Company provided a written opinion regarding Owner's and Encumbrances (O & E) for a charge of $80.00, however, the Company did not have a rate filing or applicable policy forms to support the charge or coverage.

In addition, the rate card indicated that the Company provided Owner's Extended Coverage (OEC) for an additional charge of $50.00. Considering the traditional industry standard of what constitutes OEC, this statement was misleading. Specifically, the traditional industry standard of OEC is deletion of the standard exceptions from an owner's policy. The Company's rate filings indicated that, provided underwriting guidelines were satisfied, the standard exceptions would be deleted from an owner's policy at no additional charge. Although the Company has a filing supporting a $50.00 charge for a Form 130 Owner's Extra Protection Endorsement, said endorsement is not commensurate with the industry standard for OEC and any reference or representation by the Company that the Form 130 endorsement is commensurate with OEC appears misleading.

The rate card also indicated that a "limited liability policy" would be issued for a premium of $100.00. Although the Company did not have a rate filing for or a policy form for a "limited liability policy", the Company had a rate filing and corresponding policy form for a "limited coverage loan policy." The filed rate for the limited coverage loan policy, however, was $125.00, not the $100.00 represented by the rate card.

Similarly, the rate card indicated that a "title guarantee" would be issued for a premium of $120.00. Although the Company did not have a rate filing or policy form for a "title guarantee", the Company had a rate filing and corresponding policy form for a "mortgage guarantee." The filed rate for the mortgage guarantee, however, was $90.00, not the $120.00 represented by the rate card.

Although the rates set forth in the rate card represented the commercial rate discount, the rate card did not reflect that the rates set forth therein were only applicable to commercial risks. The Rate Card made no reference to residential rates.

The schedule of rates printed in the Rate Card omitted any reference to or listing of common, significant premium discounts available through the Company in Colorado during 1999. These discounts included but were not limited to the following:

a. Streamline Bundled Loan Discount (50% off the base rate and significant savings on bundled endorsement package);
b. Refinance Discount.

3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)) charge title insurers with adopting, printing, and making available to the public a schedule of rates, fees, and charges for regularly issued title insurance policies including guarantees and other forms of title insurance coverages. The Company's Rate Card effective during the period under examination for Clear Creek and Gilpin Counties was the only such schedule available to the public in those counties and was produced with the intent to comply with the publication requirements of 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)). Omission of pertinent, common discounts in the Company's publicly disseminated schedule of rates, fees, and charges appears to misrepresent the terms, advantages, and/or conditions of the Company's title insurance policies.

The Rate Card also indicated that the premium for a foreclosure guarantee was the same as the base rate, however, the Company's rate filings indicated that the premium for a foreclosure guarantee in Clear Creek and Gilpin counties was a flat premium charge of $125.00. The appropriate charge of $125.00 was significantly lower than the base rate which carried a minimum premium of $447.00 in Clear Creek and Gilpin County.

The Rate Card indicated that the premium for a foreclosure certificate was $200.00 plus an additional $6.00 per entry, however, the Company did not have a rate filing or corresponding policy forms to support this rate or coverage.

The Rate Card inaccurately indicated that the closing fee for a residential closing was $150.00, however, the filed rate was $100.00 ($65.00 closing fee & $35.00 for related services), $50.00 less than the advertised fee.

Likewise, the Rate Card indicated that the minimum charge for a commercial closing was $250.00, however, the filed minimum fee for such was $100.00, $150.00 less than the amount set forth in the publicly disseminated Rate Card.

The Gilpin and Cleer Creek County Rate Card also indicated the Company charged $150.00 to close refinance transactions, however, the Company did not have a special fee filed for closing a refinance transactions in Clear Creek or Gilpin County. In the absence of such filing, the filed rate for a loan closing in these counties was $75.00 ($50.00 for the physical closing and $25.00 to prepare the HUD-1), regardless of whether the closing was a sale or refinance transaction. Therefore, the $150.00 charge set forth in the Rate Card was $75.00 higher than the filed rate.

Finally regarding the Clear Creek and Gilpin County Rate Card and Notebook, the Rate Card indicated that a short term reissue discount of 50% of the base rate was available in these counties for all policies wherein the commitment is ordered within 5 years of a prior title insurance policy. The 50% discount, however, was only available during the first 2 years. Furthermore, the reissue discount was only available for up to three years, and the discount factor was reduced to 25% after the 2nd year.

<u>Yuma County:</u>

The Yuma County schedule of rates printed in the Rate Card omitted any reference to or listing of common, significant premium discounts available through the Company in Colorado during 1999. These discounts included but were not limited to the following:

a. Streamline Bundled Loan Discount (50% off the base rate and significant savings on bundled endorsement package);
b. Refinance Discount (50% off the base rate for first 5 years and 40% off for the sixth year).

3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)) charge title insurers with adopting, printing, and making available to the public a schedule of rates, fees, and charges for regularly issued title insurance policies including guarantees and other forms of title insurance coverages. The Company's Rate Card effective during the period under examination for Yuma County was the only such schedule available to the public in that county and was produced with the intent to comply with the publication requirements of 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)). Omission of pertinent, common discounts in the Company's publicly disseminated schedule of rates, fees, and charges appears to misrepresent the terms, advantages, and/or conditions of the Company's title insurance policies.

The Rate Card also omitted any reference or listing of title guarantee and/or limited liability loan products offered by the Company. Although limiting coverage, these products can produce significant savings in refinance transactions.

Contrary to the Company's 1988 base filing, the Rate Card displays reissue premium charges in dollars and cents. The Company's 1988 Base Rate filing contained a rating rule stating that all premium charges will be rounded up to the next whole dollar.

Weld County:

The Weld County Rate Card indicated the content of the Rate Card was based on a rate filing made effective April 1, 1997; however, the Company did not have a rate filing with a corresponding effective date.

The premium charges set forth in the Rate Card for coverage amounts exceeding $100,000 deviated from filed rates as illustrated by the following chart:[3]

Coverage Amount	Filed Premium	Rate Card	Difference
$113,000	$564.00	$563.00	$1.00 under
$134,000	$606.00	$603.00	$3.00 under
$250,000	$838.00	$823.00	$15.00 under
$280,000	$890.00	$880.00	$10.00 under

The Rate Card listed certain ancillary closing fees assessed in addition to the standard residential or lender closing, however, the additional ancillary charges were not filed.

The Weld County Rate Card also indicated the charge for a "To Be Determined" (TBD) commitment was $225.00, however, no such charge was ever filed.

In addition, the Rate Card listed a variety of "Other Title Products" none of which were filed (i.e. $50.00 encumbrance search; $100.00 Certificate Memorandum of Ownership).

Finally regarding the Weld County Rate Card, the Rate Card indicated the premium charge for a Foreclosure Guarantee in Weld County was $175.00 with a $6.00 charge for each entry after 10 and a $35.00 charge for each endorsement after 10. Although the $175.00 charge for the Foreclosure Guarantee was filed, the $6.00 and $10.00 charge were not a part of the filed rate.

Adams, Arapahoe, Denver, Douglas, Jefferson, and Park Counties: (Direct operation).

[3] Review of underwriting escrow files indicated that the Company issued policies based on the erroneous rates set forth under the rate card. For instance, the lender's policy issued along with one title file was undercharged $5.00 as a result of the Company relying on the flawed rate card.

The Rate Card contained in front of the Notebook listed certain ancillary closing fees assessed in addition to the standard residential or lender closing, however, the additional ancillary charges were not filed.

No portion of the Notebook referenced the availability of a refinance or revamp discount available at 50% within 5 years of a prior DOT and at 40% within 6 years.

Pueblo County: (Direct operation).

The Rate Card contained in front of the Notebook listed certain ancillary closing fees assessed in addition to the standard residential or lender closing, however, the additional ancillary charges were not filed.

The Rate Card contained in the notebook also represents the minimum premium charges as $255.00 with a minimum coverage amount of $5,000, however, the Company's filed rates indicated the minimum premium charge was $178.00 with a minimum coverage amount of $1,000.

In addition, the schedule of rates printed in the Rate Card omitted any reference or listing of significant premium discounts available through the Company in Colorado during 1999 such as the following:

a. Streamline Bundled Loan Discount (50% off the base rate and significant savings on bundled endorsement package);

b. Refinance Discount (50% off the base rate for first 5 years and 40% off for the sixth year).

Larimer County: (Direct operation).

The Rate Card contained in front of the Notebook listed certain ancillary closing fees assessed in addition to the standard residential or lender closing, however, the additional ancillary charges were not filed.

The Rate Card also indicated the Company charged $125.00 to close refinance transactions, however, the Company did not have a special fee filed for closing a refinance transactions in Larimer County. In the absence of such filing, the filed rate for a loan closing in these counties was $115.00 ($90.00 for the physical closing and $25.00 to prepare the HUD-1), regardless of whether the closing was a sale or refinance transaction. Therefore, the $125.00 charge set forth in the Rate Card was $10.00 higher than the filed rate.

Likewise, the rate card indicated the minimum loan closing fee was $125.00 during the period under examination, however, the Company's rate filings indicated the minimum fee for a loan closing was $90.00.

Routt & Jackson Counties:

The schedule of rates printed in the Rate Card omitted any reference or listing of significant premium discounts available through the Company in Colorado during 1999 such as the following:

a. Streamline Bundled Loan Discount (50% off the base rate and significant savings on bundled endorsement package);

b. Refinance Discount (50% off the base rate for first 5 years and 40% off for the sixth year).

The Schedule of Rates printed in the notebook indicated that the subdivider rate was a flat charge of $295.00 for coverage amounts ranging between $20,000 and $126,000, however, the filed rates indicated the subdivider discount was 50% of the base rate premium for the coverage amount as set forth in the applicable brackets. Thus the subdivider rate for $126,000 in coverage should have been $310.00, not $295.00 as set forth in the publicly disseminated Rate Card.

Finally, the Schedule of Rates set forth in the notebook deviated from the Company's filed rates. For example the filed rate for $20,000 in coverage in Routt and Jackson County was $266.00, however, the notebook indicated the premium charge for such was $295.00; $29.00 higher than the filed rate. The filed rate for $25,000 in coverage was $283.00, however, the notebook indicated the premium charge for such was $314.00; $31.00 higher than the filed rate. The filed rate for $50,000 in coverage was $368.00, however, the notebook indicated the premium charge for such was $411.00; $43.00 higher than the filed rate.

Recommendation #8:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(a)(I) and (b), C.R.S. and Colorado Insurance Regulations 3 CCR 702-3(3-5-1(IV)(A)-(G) & (V)(A)-(F)). In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating that the Company has amended the referenced Notebooks and Rate Cards so that material accurately reflects the Company's rates on file with the Colorado Division of Insurance. In addition, the Company should be required to demonstrate that it has adopted and implemented procedures which will assure the accuracy of any information or material promulgated by the Company with the intent for public dissemination.

PERTINENT FACTUAL FINDINGS

for

RATE APPLICATION

RATING SECTION 1

Schedule of Rates, Fees & Charges

TITLE INSURANCE POLICIES.

Issue I: Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify certain title insurance premium rates.

Section 10-4-401, C.R.S., provides:

> (b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Section 10-4-403, C.R.S., provides:

> (1) Rates shall not be excessive, inadequate, or unfairly discriminatory.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VII)(K), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

> K. Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or unfairly discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.
>
> Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

In addition to the above 3 CCR 702-5(5-1-10)(5)(C)(2), (4), and (5) provide:

> (2) Every property and casualty company, including those writing workers' compensation and title insurance, is required by this regulation to provide a list of minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it

proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

(4) Each rule filing must identify the kind of insurance, (e.g., Type I), and must be consistent with the rate filing procedure defined for that type of insurance. Each filing must be accompanied by a completed copy of the appropriate filing form prescribed by the Commissioner in a separate Bulletin.

(5) Each rule filing must include a side-by-side comparison of any change proposed. If the proposed rules are not replacing existing rules used by the filer, then the filer must so state in the filing.

BASIC SUBDIVIDER RATE:

The Company's 1988 base rate manual effective during the period under examination contained the following volume discount for developers and contractors:

The Company's rating manual contained the following regarding Subdivision Discount Rates:

BASIC SUBDIVISION RATE

50% of the basic schedule of rates.

For each county's specific filing see Section B, Title 2. (Effective since 8/1/88.)

NOTE: The basic subdivision rate is available to a builder-developer, of land within a single subdivision or tract, all of which is been developed for sale as separate lots, tracts, or separate individual units of occupancy. The charges set forth herein are in addition to the charges for the policy insuring the owner upon acquisition of his estate or interest in the land if such policy was issued or is to be issued.

Transnation Title Insurance Company, 1988 BASE RATE FILING, Section A, Title 7, Section 7.1 at p. A-7-1(ed. effective 8/1/88).

Pursuant to 3 CCR 702-3(3-5-1(VII)(K), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the requested filings, the Company was asked to produce a prospective justification of the subdivider rate in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the Company's subdivider discount rate did not contain a sufficient justification of the subdivider rate as the response did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the Company's response did not contain pertinent supporting financial or statistical data. In addition, the Company's response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of builder/developer subdivider discount rates.

ADDITIONAL CHARGES FOR DUPLICATE POLICIES:

The Company's 1988 Base Rate Manual effective in Colorado during the period under examination contained the following rate/rating rule regarding providing insureds with duplicate policies:

> **DUPLICATE POLICIES**
>
> Duplicate policies in which no additional insurance is given may be furnished to the insured at the discretion of the company for a service charge of $20.00 each. The duplicate policy must contain a statement: 'This policy is issued in lieu of lost policy number ________________________, which is hereby cancelled.'

Transnation Title Insurance Company, 1988 BASE RATE FILING, Title 3, Section 3.17 at p. A-3-7(ed. effective 8/1/88).

Pursuant to 3 CCR 702-3(3-5-1(VII)(K), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data demonstrating the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the requested filings, the examiners requested Company representatives to provide a prospective justification of the charge in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the duplicate policy charge did not contain a sufficient justification of the cited rate as the response did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the Company's response did not contain pertinent supporting financial or statistical data. In addition, the response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the cited rate.

COUNTY-BY-COUNTY RATE DEVIATIONS FOR CONCURRENT LENDER POLICIES.

The Company's rate filing s effective during the period under examination stated that the premium charge for the simultaneous issue of lender's policy when such coverage was issued in conjunction with a qualifying owner's policy was a flat rate of $100.00 in 52 Colorado Counties[4]. See Section A, Article 5.1, SIMULTANEOUS ISSUANCE OF LENDER'S POLICY, Rate Filing effective 4/10/97.

Notwithstanding the above, the filed rate for the simultaneous issue of a lender's policy in Larimer and Weld Counties was $75.00 during the period under examination and the filed rate for the simultaneous issue of a lender's policy in Elbert, Logan, Mesa, Morgan, Pueblo, Routt and Yuma Counties was $60.00 during the period under examination.

Pursuant to 3 CCR 702-3(3-5-1(VII)(K), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data to demonstrate the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory as those terms are defined under 10-4-401 et seq., C.R.S. Since the Company was unable to produce the filings, the examiners requested Company representatives to provide a prospective justification of the cited rates in accordance with the criteria established under the statutes cited above.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county fluctuation of concurrent lender policy premium rates was not sufficient justification of the cited rate and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the county-by-county rate variation for simultaneous issue rates.

[4] The 52 counties included -Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Chaffe, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Delores, Delta, Denver, Douglas, Eagle, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, Kiowa, Kit Carson, Lake, La Plata, Las Animas, Lincoln, Mineral, Moffat, Montezuma, Montrose, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, and Washington.

COUNTY-BY-COUNTY RATE DEVIATIONS FOR SHORT TERM RE-ISSUE RATES:

During the period under examination the Company's filed rates contained a "short term reissue" discount for all title insurance policies issued by the Company within a fixed period of any prior title coverage. Although the Company's short term re-issue rate was available throughout Colorado, the term of eligibility and discount percentage varied by county. Specifically, the Company's rate manual rule provided:

The Company's Short Term Re-issue rate is available throughout Colorado, however, the term of eligibility varies by county. Specifically, the Company's multi-county rate filing provides:

> When a policy is ordered within two years of the effective date of a prior owner's, loan or leasehold policy, the charge will be 50% of the amount set forth in the basic schedule of rates computed at the dollar amount of the prior policy, the increase, if any, to be computed in accordance with the charges set forth in the basic schedule of rates in the applicable brackets. When a policy is ordered within three (3) years, but more than two (2) years of the original policy date of a prior owner's, loan or leasehold policy, the charge will be 75% of the basic schedule of rates in the applicable brackets

Transnation Title Insurance Company, SPECIFIC CHARGE PROVISIONS AND VARIANCES FOR COUNTIES, MULTI-COUNTY, Section B Title 2(ed. effective 3/5/96).

Although the cited reissue discount was available in a majority of the remaining Colorado Counties, the term of eligibility and discount percentage varied by county. The following chart is illustrative of these county-by-county variances.

	County(ies)	Short Term Rule		Date of Applicable Filing	Require a Copy of Prior Policy
1.	Multi County	0-2 years 2-3 years	50% 25%	3/5/96	**NO**
2.	Elbert	0-3 years	50%	11/2/92	**YES**
3.	Larimer	0-3 years	50%	8/01/88	**YES**
4.	Mesa	0-3 years	50%	9/01/89	**YES**
5.	Morgan	0-2 years	50%	8/01/88	**YES**
6.	Logan	0-2 years	50%	8/01/88	**YES**
7.	Pueblo	0-5 years	50%	3/05/96	**YES**
8.	Routt/Jackson	0-3 years	50%	12/28/90	**YES**
9.	Weld	0-3 years	50%	8/01/88	**YES**
10.	Yuma	0-2 years	50%	8/01/88	**YES**

The examiners requested Company representatives to identify the increased risk factors associated with lender's concurrent coverage in those Colorado Counties where the reissue discount factor was less than 50% and where such discount was not available at 50% for the five year term as is the case of Pueblo County. The examiners requested the Company's response to include sufficient financial and statistical data to demonstrate the above cited rate and rating rule was not inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401 et seq., C.R.S.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county variation of the re-issue discount was not sufficient justification of the cited rate and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the cited county-by-county rate variation.

COUNTY-BY-COUNTY RATE DEVIATIONS FOR JUNIOR LENDER RATES:

During the period under examination the Company's filed rates contained a base premium discount for lender's title policies issued to junior lenders. Although the Company's junior lender discount was available throughout Colorado, the discount percentage varied by county. Specifically, the Company's rate multi county rate manual rule provided:

> Junior Lender Rate
>
> Credit of $210.00 for policies insured for $1,000 - $15,000
> Credit of $195.00 for policies insured for over $15,000

Transnation Title Insurance Company, SPECIFIC CHARGE PROVISIONS AND VARIANCES FOR COUNTIES, MULTI-COUNTY, Section B Title 2(ed. effective 4/10/97).

The Company's rate filings effective for Pueblo Routt, and Weld Counties provided:

> Junior Lender Rate 65% of basic

Transnation Title Insurance Company, SPECIFIC CHARGE PROVISIONS AND VARIANCES FOR COUNTIES, WELD COUNTY, Section B Title 2(ed. effective 4/10/97); Transnation Title Insurance Company, SPECIFIC CHARGE PROVISIONS AND VARIANCES FOR COUNTIES, ROUTT COUNTY, Section B Title 2(ed. effective 4/10/97); Transnation Title Insurance Company, SPECIFIC CHARGE PROVISIONS AND VARIANCES FOR COUNTIES, PUEBLO COUNTY, Section B Title 2(ed. effective 3/05/96).

The Company's rate filing effective for Larimer County provided:

> Junior Lender Rate 75% of basic

Transnation Title Insurance Company, SPECIFIC CHARGE PROVISIONS AND VARIANCES FOR COUNTIES, LARIMER COUNTY, Section B Title 2(ed. effective 3/05/97).

Considering the overall rational for junior lender rates, the examiners requested Company representatives to identify the increased risk factors associated with junior lender's coverage in Larimer County where the junior lender's discount factor was less than 35%. The examiners requested the Company's response to include sufficient financial and statistical data to demonstrate the above cited rate and rating rule was not inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401 et seq., C.R.S.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county variation of the junior lender's discount was not sufficient justification of the cited rate and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the cited county-by-county rate variation.

COUNTY-BY-COUNTY RATE FLUCTUATIONS; GENERALLY.

In addition to the Company rating rules discussed above, a review of statewide rate filings made by the Company and or its Colorado agents, raised certain questions regarding whether the Company's statewide rating scheme complied with the requirements of Colorado law. Specifically, the examiners questioned whether variances in rate charges among different Colorado counties was unfairly discriminatory under Colorado law or whether the county-by-county rating scheme in the business of title insurance resulted in excessive rates.

For instance, the Company's rate filings effective during the period under examination for Boulder and Denver county results in different rates charged in each county. The premium charges for a basic ALTA owner's policy in Denver County were $735.00 on a 100,000 home, or $7.35 per thousand. Each additional thousand dollars of coverage over and above 100,000 carried an additional premium charge of $1.95 per thousand.

The premium charges for the same coverage in Larimer County were $559.00 on a 100,000 home, or $5.59 per thousand. Unlike Denver County, each additional thousand dollars of coverage over and above the 100,000 but less than $500,000 carried an additional premium charge of $1.85 per thousand.

The examiners requested the Company to identify factors supporting disparate premium charges among several Colorado Counties. The Company was informed that its response should be a detailed answer describing past and prospective loss and expense experience. The Company was also asked to demonstrate how a reasonable profit provision is incorporated into the

Company's premium charges for title coverage, specifically indicating how the Company's investment income offsets the reasonable profit provision.

Pursuant to 3 CCR 702-3(3-5-1(VII)(K), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data demonstrating the above cited rates and rating rules were not inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401 et seq., C.R.S. The Company was unable to produce a copy of the reports so the examiners requested Company representatives to produce financial and statistical justification of the rate in question.

The Company's response to the examiners' request for statistical and financial justification of the county-by-county rate fluctuations was not sufficient justification of the cited rates and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain pertinent supporting financial or statistical data. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of county-by-county rate fluctuations.

BASE RATE PREMIUM DISCOUNT FOR ELEEMOSYNARY ORGANIZATIONS:

The Company's rating manual contained the following regarding reduced premium charges for eleemosynary entities:

> Churches or Charitable Non-Profit Organizations:
> A charge of 50% of the Basic Rate may be charged as to owner's and/or lender's insurance properly paid for by insured churches, charitable or like eleemosynary non-profit organizations on property dedicated to church or charitable use within the normal activities for which such entities were intended. The Basic Rate, with one discount applies on policies issued on all other property.

Transnation Title Insurance Company, 1988 BASE RATE FILING, Title 4, Section 4.17(ed. effective 8/1/88).

Pursuant to 3 CCR 702-3(3-5-1(VII)(K), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce the Company's 1999 3 CCR 702-3(3-5-1) Attachment A filings containing financial and statistical data demonstrating the above cited rate and/or rating rule was not inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401 et seq., C.R.S. The Company was unable to produce a copy of the reports so the examiners requested Company representatives to produce financial and statistical justification of the rate in question.

The Company's response to the examiners' request for statistical and financial justification of the cited entity specific discount was not sufficient justification of the cited rate and did not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the response did not contain pertinent supporting financial or statistical data. In addition, the Company's response did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the cited entity specific discounts.

Recommendation #9:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-4-403(1), C.R.S., 3 CCR 702-3 (3-5-1)(VII), and 3 CCR 702-5(5-1-10) as applicable to the findings addressed in the text above. In the event the Company is unable to provide such documentation, it should be required to provide the Colorado Division of Insurance with adequate financial and statistical data of past and prospective loss and expense experience to justify the cited Company premium rates, fees, and charges. The filing should specifically identify and explain how a reasonable profit provision is incorporated into the development of the Company's premium rates, fees and charges.

In addition, the Company should be required to provide written assurance that it will comply with the requirements of 3 CCR 702-3(3-5-1)(VII)(K) and submit an annual filing to the Colorado Division of Insurance of sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or unfairly discriminatory in accordance with 10-4-401, C.R.S. et seq.

Finally regarding this issue, the Company should be required to provide written confirmation demonstrating that pertinent Company representatives have reviewed Colorado Division of Insurance regulation 3 CCR 702-5(5-1-10) which governs rate and rule filing submissions for all title insurers soliciting business in Colorado. The Company's written confirmation that Company representatives have reviewed the regulation should include written assurances that the Company will comply with the requirements of the regulation.

Issue J: Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or misapplication of filed rates.

Section 10-4-401(3), C.R.S., provides:

> (b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104(1)(f), C.R.S., defines unfair discrimination as:

> (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Consistent with the provision of §10-4-401 et seq., 3 CCR 702-3(3-5-1) requires all title insurers offering coverage in Colorado to comply with Colorado laws and regulations regarding rates and rating practices. Specifically, the regulation provides in pertinent parts:

> IV. SCHEDULE OF RATES, FEES AND CHARGES--TITLE INSURANCE POLICIES
>
> A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees. . .
>
> . . .G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .
>
> . . .J. No title entity shall quote any rate, fee or make any charge for a title policy to any person which is more or less than that currently available to others

for the same type of title policy in a like amount, covering property in the same county and involving the same factors as set forth in its then currently effective schedule of rates, fees and charges. . . .

. . .V. SCHEDULE OF FEES AND CHARGES--CLOSING AND SETTLEMENT SERVICES

A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services. . . .

. . .F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .

. . .I. No title entity shall quote any fee or make any charge for closing and settlement services to any person which is less than that currently available to others for the same type of closing and settlement services in a like amount, covering property in the same county and involving the same factors, as set forth in its then currently effective schedule of fees and charges.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

(1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

(4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

Item number four (4) of the Colorado Division of Insurance's Company Checklist of Examination Requirements requested the Company to:

4. Prepare a specimen of each policy and endorsement forms in use during the examination period; include samples of manuscripted endorsements when applicable. Prepare a copy of all title insurance rate filings applicable to the period under examination and stamped by the Colorado Division of Insurance. Provide a schedule of fees and charges for closing and settlement services, which has been stamped by the Colorado Division of Insurance.

In accordance with the Division's request, the Company prepared a specimen of each rate submission made to the Colorado Division of Insurance for rates effective during the period of examination.

Review of the Company's rate submissions demonstrated that the Company was not in compliance with Colorado Insurance laws regarding rate filing requirements for type II insurers. Specifically, although the rate submissions produced by the Company contained the Colorado Division of Insurance's "RECEIVED" stamp which evidenced the rates were submitted to the Division 30 days prior to the intended effective date, none of the filings bore the Colorado Division's "FILED" stamp indicating the rates were filed and not returned to the Company by the Colorado Division of Insurance as incomplete.

Using the rate submissions discussed above as a baseline, the following sample demonstrated that, in some instances during the period under examination, the Company failed to use rates on file with the Colorado Division of Insurance when issuing policies of insurance:

TITLE POLICIES ISSUED
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
44,376	100	78	78%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .23% of all title policies issued by the Company in Colorado during the period under examination, showed 78 exceptions (78% of the sample) wherein the Company issued title insurance policies using rates and/or rating rules not on file with the Division of Insurance and/or failed to use rates on file with the Colorado Division of Insurance when issuing policies of insurance.

Many files reviewed contained more than one rating error, however, to maintain sample integrity, each file was considered as a singular exception regardless of the total errors contained in the file. Thus, the exception frequency reported above was 78%, however the 100 files reviewed contained a total of 132 premium rating errors. The following chart contains a breakdown of the findings by coverage:

Type of Coverage	Number of Errors	% to Sample (file errors)	Range of Errors
Owner's	34 errors (34 files)	34%	**Over:** $ 2.00 to $199.00 (11 errors) **Under:** $1.00 to $779.00 (23 errors)
Lender's	36 errors (36 files)	36%	**Over:** $3.00 to $183.98 (17 errors) **Under:** $2.00 to $849.00 (19 errors)
Endorsements	62 errors (43 files)	43%	**Over:** $1.88 to $225.00 (34 errors) **Under:** $3.05 to $79.97 (28 errors)
Total	**132 errors* (78 files)**	**78%***	**Over:** $1.88 to $225.00 (58 errors) **Under:** $3.05 to $79.97 (68 errors)

* Totals for files and percentages consider counting a file with multiple errors as a single exception.
** Range of error does not include rounding errors.

In nine (9) instances the Company misapplied its short-term re-issue premium discount, failing to allow the discount to eligible applicants and/or allowing the discount to ineligible applicants. Specifically, during the period under examination the Company's rating manual provided:

> When a policy is ordered within two years of the effective date of a prior policy, charge will be 50% of the amount set forth in the basic schedule of rates. A copy of the prior policy or other reasonable evidence of its existence must be retained in the issuing agent's file. The 50% rate is to be based on the dollar amount of the prior policy with any additional amount to be computed at the basic schedule of rates. If the policy to be issued has a lesser liability than the prior policy, the short term rate will be calculated at the applicable percentage of the basic schedule of rates based upon the liability of the policy to be issued.

Transnation Title Insurance Company, 1994 BASE RATE FILING, Title 8, Section 8.10 at p. 39(ed. effective 9/1/94).

Six (6) of the 132 errors were instances wherein the Company collected premium charges for certain limited liability lender policies which deviated from the Company's filed rates for such policies. Specifically, during the period under examination the Company had a filed flat rate of $125.00 for limited liability loan policies issued in Colorado. Similarly, during the same period the Company had a filed flat rate of $90.00 for mortgage guarantee policies issued in Colorado. In two (2) of the six (6) instances the Company charged $100.00 and $95.00 to issue limited liability loan policies resulting in undercharges of $25.00 and $35.00 respectively. In four (4) instances, the Company deviated from the filed rate of $90.00 and overcharged its insured's when issuing title guarantee policies. These overcharges ranged between $5.00 and $65.00.

Twenty-six (26) of the 132 were rounding errors in which the Company rounded premium charges contrary to the Company's filed rates and rating rules. Specifically, the Company's 1988 Base Rate filing, effective in Colorado during the period under examination, contained a rating rule that required all base premiums to be rounded up the next nearest whole dollar. In eight (8) of the files the Company expressed the premiums to the nearest penny. In five (5) other files the Company rounded premium calculations down to the next nearest whole dollar. Expressing base rate premiums in pennies and/or rounding base rate premium calculations down the next nearest whole dollar was not in compliance with the Company's filed rates.

Notwithstanding the fact that the Company had a rounding rule pertaining to the base rate premium, the Company did not have a rounding rule that applied to other premium charges, endorsements, or settlement and closing fees and charges. Six (6) of the Twenty-six (26) rounding errors resulted when the Company rounded the premium charges for endorsements without the benefit of an applicable rounding rule resulting in overcharges ranging between $.10 and $.97.

Although the Company's rounding rule required all base premiums to be rounded up to the next whole dollar, the Company's rounding rules did not provide for incremental or periodic rounding at various stages during the calculation of premium charges. In the absence of a rounding rule to the contrary, the examiners calculated the base rate premium for each policy by carrying all remainders to the nearest penny and rounding the end products. In some instances, however, the Company rounded premium calculations at each stage of the rate calculation and again at the final product which resulted in seven (7) rate errors with over and undercharges ranging between $2.00 and $4.00.

The majority of the remaining 91 errors were rate miscalculation errors resulting in 45 overcharges ranging between $5.00 and $225.00 and 46 undercharges ranging between $5.00 and $849.00.

Recommendation #10:

Within 30 days the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104(1)(f)(II) and 10-4-403, C.R.S., and the filing requirements of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to provide assurances that all future policies will be issued in accordance with filed company rates and all premium charges will accurately reflect rates on file with the Colorado Division of Insurance.

In addition, the Company should be required to file a rounding rule and provide written assurances that the rule will be distributed to Company examiners and other individuals responsible for and involved in the process of calculating or determining premium charges to assure that the rule will be implemented and followed. Such filing should be submitted to appropriate individuals within the rates and forms section of the Colorado Division of Insurance with a "FILED" stamped copy subsequently forwarded to the market conduct section.

The Company should also be required to perform a self-audit from January 1, 1999 to present and return any excess monies collected as determined by the self-audit. The self-audit should be performed in accordance with Colorado guidelines for self-audits.

Finally, the Company should be required to review its procedures pertaining to rate submissions and filings and produce evidence demonstrating that the Company has reviewed and amended those procedures to assure the Company will retain copies of Company rates baring the Colorado Division of Insurance's "FILED" stamp as evidence that the subject rate or rates were filed in compliance with the requirements of §10-3-401 et seq., C.R.S.

Issue K: Engaging in unfairly discriminatory rating practices and adopting rate rules and/or premium charges that are excessive, unfairly discriminatory and/or adopting rating rules or premium charges that improperly favor producers of title insurance business.

Section 10-3-1104(l)(f)(II), C.R.S., defines an unfair method of competition or deceptive act or practice in the business of insurance as:

> (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-4-403, C.R.S., provides:

> (1) Rates shall not be excessive, inadequate, or unfairly discriminatory.

Sections 10-11-108(c) and (d), C.R.S., provide:

> A title insurance company or title insurance agent shall not. . .
>
> (c) Give or receive or attempt to give or receive remuneration in any form pursuant to any agreement or understanding, oral or otherwise, for the referral of title insurance business;
>
> (d) Give or receive or attempt to give or receive any portion or percentage of any charge made or received in connection with the business of title insurance if such charge is not for services actually rendered. For purposes of this article, "services actually rendered" shall include but not be limited to a reasonable examination of a title, including instruments of record, and a determination of insurability of such title in accordance with sound underwriting practices; "services actually rendered" shall not include the mere referral of title insurance business.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1(VI)(A) and (B), provide in pertinent parts:

A. In addition to any and all acts which may be proscribed elsewhere in Title 10, no title entity shall pay, furnish, or agree to pay or furnish, either directly or indirectly, to or on behalf of any of the persons listed in this paragraph A, any commission or any part of the fees or charges or anything of value, in connection with any past, present, or future title insurance business, any closing and settlement services or any other title business:

1. Any producer of title business, or any associate thereof;

B. The following is a partial, but not all-inclusive, list of acts and practices which are considered unlawful inducements proscribed by this Regulation, and the Colorado statutes pertaining to the business of insurance. . .

4 Paying for, furnishing or offering to pay for or furnish to or for any of the persons described in A. of this article by way of reward, inducement or compensation with respect to any past, present or future title insurance business or any closing and settlement services or other title business, anything of material value. . .

7. Charging less than the scheduled rate, fee or charge for a specified title or closing and settlement service, or for a policy of title insurance.

For purposes of the regulation cited above, 3 CCR 702-3(3-5-1)(III)(F) defines a "producer of title insurance" as:

F. "Producer of title business" includes any person engaged in the trade, business, occupation or profession of:

1. Buying or selling interests in real property;

2. Making loans secured by interests in real property; and,

3. Acting as agent, representative, attorney, or employee of a person who buys or sells any interest in real property or who lends or borrows money with such interest as security. (Notwithstanding the foregoing no title entity acting in the capacity of agent for any of the above parties in performing the business of title insurance shall be deemed to be a producer of title business.)

Colorado Insurance Regulation 3 CCR 702-3(3-5-1(VI)(B)(11), prohibits title insurers from:

Accumulating, crediting or deferring the charge for a title policy or closing and settlement services in order to 'qualify' the charge for said policy and a later transaction for a lower rate.

UNFAIRLY DISCRIMINATORY RATING PRACTICES-FAILING TO OFFER AND/OR PROVIDE QUALIFIED APPLICANTS WITH FILED COMPANY BUNDLED LOAN PREMIUM DISCOUNT:

Notwithstanding the discussion under Issue J above regarding premium discount errors, the Company's 1997 rate filing, effective throughout Colorado during the period under examination, contained the following premium discount rule:

<u>Streamline (Bundled) Loan and Endorsement Package</u>

> When a loan policy is issued insuring a loan which is replacing or revamping a deed of trust within a prior 10 year period; the policy may be issued for 50% of the basic schedule of rates. An endorsement package including compressive endorsement form 100, form 8.1, and either form 115.1 or 115.2 issued in conjunction with a policy insuring such revamping or replacement loans may be issued at a charge of $50.00

Transnation Title Insurance Company, 1997 RATE FILING, (ed. effective 4/10/97).

Although the streamline bundled loan discount was filed to be effective in all Colorado counties, aside from the Company's Denver metro area schedule of rates, the rate did not appear in any schedule of rates prepared by the Company for public dissemination in accordance with the requirements of 3 CCR 702-3(3-5-1(IV). The Company's failure to include the rate in the Company's various schedules of rates composed and distributed to the public with the intent to comply with the requirements of Colorado law demonstrated the rate, though available state wide, was not publicized or offered outside the Denver metro area. In addition, a review of the following sample demonstrated the Company failed to honor the discount when issuing qualifying title policies:

TITLE POLICIES ISSUED
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
44,376	100	11	11%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .23% of all title policies issued by the Company in Colorado during the period under examination, showed 11 exceptions (11% of the sample) wherein the Company issued title insurance policies and endorsements and failed to offer and/or provide the streamline bundled loan discount to qualified applicants for title insurance coverage.

The 11 policies reported here were eligible for the cited discount, however, the files did not reflect the discount was ever offered or provided. The end result was that the policies should have been issued at a significant reduction in premium resulting in overcharges ranging between $1.00 and $320.00. The range is somewhat misleading in that the premium for the policy issued to the insured that was overcharged $1.00 was calculated using other discount factors. The average overcharge in the 11 reported policies was $97.14 with a medium overcharge of $160.50.

In addition to the premium discount, according to the Company's filing each policy should have been issued with endorsements 100, 8.1, and either form 115.1 or 115.2 at an additional charge of $50.00. Instead, 6 of the 11 policies were issued with endorsements 100 and 8.1 for a full premium charge totaling $70 resulting in an additional $20.00 overcharge per policy. Furthermore, the Company's failure to issue the form 115.1 or 115.2 endorsement with the policy and charging full premium for the form 100 and 8.1 endorsements resulted in insureds paying higher premium charges for less coverage.

Eight (8) of the 11 policies were issued with endorsements 100, 8.1, and 115.2, however, the endorsements were not issued at the $50.00 bundled rate. Instead, each endorsement was issued at 100% of the filed rate with combined charges ranging between $70.00 and $195.00. After factoring in the $50.00 bundled charge for the endorsement package, this practice resulted in additional per policy overcharges ranging between $20.00 and $144.00.

BUILDER – DEVELOPER BULK RATES:

The Company's 1994 rate filing, effective in Pueblo County during the period under examination, contained a volume discount for certain developers or subdividers of properties. Specifically, the Company's rating manual contained the following Builder/Developer Bulk Rate Discount:

> Builder - Developer Bulk Rate
>
> Rate applies when an owner's policy is issued on a sale transaction from a Builder/Developer for which the Company has documented sales exceeding 30 per year.
>
> A. The charge shall be 30% of the basic schedule of rates based upon the amount of the sale being insured. . .

Transnation Title Insurance Company, SPECIFIC CHARGE PROVISIONS AND VARIATIONS FOR COUNTIES, PUEBLO COUNTY, Title 2, Section B at p. B-2-5 (ed. 9/1/94).

Section 10-11-108(c), C.R.S. prohibits insurers from giving remuneration for the referral of title insurance business. In addition, 3 CCR 702-3(3-5-1)(VI)) prohibits title insurers from providing premium discounts as an inducement for any past, present or future title insurance business. The builder/developer bulk rate provides a graduated discount to builders or developers. The discount increases in relation to the amount of units the builder or developer anticipates producing in a calendar year. Although the rule does not facially require referral of the developer's business, the graduated discount scheme whereby the developer's discount increases based on the producer's production implies the discount contemplates referral or receipt of the developer's future business. Insomuch as the cited rate contemplates past present and/or future referral business, the rate conflicts with Colorado law.

3 CCR 702-3(3-5-1)(VI)(A) prohibits title insurers from discounting premium charges for or on behalf of any producer of title insurance business. A "producer of title insurance business" is defined by the regulation as "any person engaged in the trade, business, occupation or profession of buying or selling interest in real property or making loans secured by interests in real property." Allowing a premium discount to a producer or producers of title insurance business simply because such entity is a builder, developer, or investor is in direct conflict with Colorado law. The Company's builder/developer bulk rate provides a discounted premiums to producers of title insurance business.

Any volume or bulk discount available to producers of title insurance that is contingent solely upon the producer providing the Company with a fixed threshold of title insurance order's and, in order to remain eligible for the discount, requires the producer to sustain that threshold fails under Colorado law because the rating scheme is remunerative and anticipates past, future, and/or prospective repeat business. Despite possible justification of the Company's bulk rate or volume discount, bulk or volume premium discounts for producers of title insurance business are prohibited under Colorado law as such discounts provide improper inducements for future or prospective title insurance business.

DISCRETIONARY RATING RULE REGARDING VALUATION OF LEASEHOLD POLICIES:

The Company's 1994 Base Rate Manual effective in Colorado during the period under examination contained the following rating rule regarding valuation of leasehold policies:

> COMMERCIAL OR RESIDENTIAL LEASEHOLD OWNER'S POLICY:
>
> C. Abstract Retirement Rate
>
> The minimum charges may be computed on either the full value of the land and existing improvements or on a lesser amount relating to the term of the lease as follows:
>
> a) Less than twenty-five (25) years – ten (10) times the annual rental.
>
> b) Twenty-five (25) years or more but less than fifty (50) years – twenty (20) times the annual rental.
>
> c) Fifty (50) years or more – the full value of the land and existing improvements.

d) Insurance in excess of the minimum amount may be issued at the appropriate insurance rate.

Transnation Title Insurance Company, 1988 BASE RATE FILING, Title 6, Section 6.1(C) at p. A-6-2(ed. effective 8/1/88).

The cited rating rule contained a permissive element which stated that the minimum charges "may be computed on either the full value of the land and existing improvements or on a lesser amount related to the term of the lease." The rule afforded Company agents the opportunity to manipulate premium charges by determining the value of the policy. Permissive, discretionary rating rules that allow for potential disparate treatment between individuals of the same class and of essentially the same hazard in the amount of premium charged violate Colorado anti-discrimination statutes.

DISCRETIONARY INSPECTION CHARGE.

The Company's 1988 Base Rate Manual, effective during the period under examination, contained the following rate variations regarding inspection charges:

> Inspection Charge: If the issuance of a commitment or endorsements requires a physical inspection of the property, a minimum charge of $25.00 is made. If an order is canceled after an inspection has been made, the charge thereof is added to the fee for cancellation of the order.

Transnation Title Insurance Company, 1988 BASE RATE FILING, Title A, Section 8.4 at p. A-8-2(ed. effective 8/1/88).

The cited rule stated that the $25.00 inspection charge is a "minimum" charge, however, the rule failed to identify or establish any articulable standards for determining additional charges. The absence of ancillary guidelines for determining additional charges rendered the rule ambiguous. Without additional guidelines for determining additional charges, any inspection charge assessed over the filed rate of $25.00 was left to the discretion of the issuing agent. Discretionary rating rules allow for potential disparate treatment between individuals of the same class and of essentially the same hazard in the amount of premium charged and such violate Colorado anti-discrimination statutes.

DISCRETIONARY RULE PERTAINING TO REFUND OF COMMITMENT CANCELLATION CHARGES:

The Company's 1988 Base Rate Manual effective in Colorado during the period under examination contained the following regarding an abstract retirement rate:

CREDIT FOR CANCELLATION CHARGES ON COMMITMENTS

A. Where no substantial change in the title has occurred subsequent to the original commitment, the order may be reopened and all or a portion of the cancellation charge for the commitment may be credited on a subsequent policy charge within the following time periods from the date of the commitment: Within 24 months: 100% credit of the cancellation charge toward the policy charge; over 24 months: No credit for the cancellation charge.

B. Where a substantial change in the title has occurred subsequent to the date of commitment and a policy is to be issued covering additional documents, the insurance rate applicable shall be charged and no credit will be allowed for the cancellation charge.

Transnation Title Insurance Company, 1988 BASE RATE FILING, Title 3, Section 3.15 at pp. A-3-6(ed. effective 8/1/88).

The cited rating rule contained a permissive element which stated that, at the discretion of the issuing agent, "where no substantial change in the title has occurred subsequent to the original commitment, an order <u>may</u> be reopened and all or a portion of the cancellation charge for the original commitment may be credited on a subsequent policy" within certain time periods. Aside from the time periods during which the percentage of the amount refunded is reduced over time, no guidelines were provided for determining when an agent <u>must</u> refund or credit such charges.

<u>DISCRETIONARY RULE PERTAINING POLICY CORRECTION CHARGES:</u>

The Company's rating manual contained the following rule regarding policy corrections:

CORRECTIONS DUE TO ERROR OR MISUNDERSTANDING:

The charge for a policy to correct an error or misunderstanding not the fault of the company, by or between the parties to the transaction will be a minimum service charge of $25.00 and a maximum service charge of $250.00.

Transnation Title Insurance Company, 1988 BASE RATE FILING, Title 3, Section 3.18 at p. A-3-7(ed. effective 8/1/88).

The cited rule established a charge for correcting policy errors not resulting from or attributable to acts of the Company. The rating rule established a range for the charge, however, the rule failed to identify or establish any articulable standards for determining the actual charges within the established range. The absence of ancillary guidelines for determining charges within the range rendered the rule ambiguous. Without additional guidelines for determining additional charges, any correction fee or charge assessed within the range was left to the discretion of the Company and/or issuing agent. Discretionary rating rules allow for potential disparate treatment between individuals of the same class and of essentially the same hazard in the amount of premium charged and such violate Colorado anti-discrimination statutes.

LIMITING COVERAGE OFFERED TO CERTAIN COLORADO COUNTIES AND/OR FAILING TO OFFER PARTICULAR TITLE INSURANCE PRODUCTS TO ALL COLORADO CONSUMERS:

The Company's schedules of rates and fees established a commercial discount rate. The base premium for commercial risks was the same as the rate for residential risks for the first $100,000. The discount factor for the commercial rate began at $100,001 in coverage and increased incrementally with coverage. For instance, in accordance with the Company's filed rates, the base rate premium charge was discounted $.05 per thousand for commercial risks exceeding $100,000 and less than $500,000 for that portion of the premium representing the increase in coverage over $100,000. The premium charges for commercial risks with coverage between $500,000 and 1 million was discounted $.15 per thousand for that portion of the premium representing the increase in liability over $500,000. This commercial risk discount was available throughout Colorado with the exception of nine (9) counties (Elbert, Jackson, Larimer, Logan, Mesa, Morgan, Routt, Weld, and Yuma).

3 CCR 702-3(3-5-1)(IV)(E)) establishes that title insurers may charge different title insurance rates in different Colorado counties. The differential charges, however, must be justifiable and cannot be inadequate, excessive or unfairly discriminatory as those terms are defined by §10-4-401, C.R.S. The fact that the commercial discount rate is unavailable and disfavor insured's located in a handful of Colorado counties is a prima fascia indication of discrimination, however, rates are not contrary to Colorado law unless such rates are unfairly discriminatory. Colorado law provides that unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory solely if different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy.

Furthermore, rates are excessive if they are likely to produce a long run profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered. §10-4-403(1)(a), C.R.S.

The examiners requested Company representatives to produce financial and statistical data to demonstrate the above cited rates and/or rating rules were not excessive or unfairly discriminatory as those terms are defined under 10-4-401 et seq. The Company was unable to produce such information which demonstrated the unavailability of the Company's commercial discount rate in the nine (9) enumerated counties was excessive and unfairly discriminatory. Additionally, failing to make title insurance products available for all qualified Colorado applicants or limiting coverage in Colorado by territory without adequate justification is contrary to the provisions of §§10-3-1104(I)(f)(II) and 10-4-401 et seq., C.R.S.

MISCELLANEOUS DISCRETIONARY RATES AND/OR RATING RULES:

The Company's filed rates during the period of examination, January 1, 1999 through December 31, 1999, contained the following rates/rating rules which included a permissive element. Moreover, the following rating rules did not include clear articulable standards or guidelines regarding when and under what circumstances an agent was to apply the rate and/or what rate the agent was to apply:

	Territory (County)	Effective Date	Rate/Rating Rule	PAGE (section)
1.	Larimer	3/05/96	**Premium Charge for Foreclosure Guarantee for limits of liability over $300,000-**Range of $300 to $500 with no articulable standards for determining premium charges within the range.	B-2-4
2.	Larimer	3/05/96	**Endorsement 116**-Minim charge of $50.00 with no articulable standards for determining additional charges.	Section A Article 9.1 (Larimer)
3.	Larimer	3/05/96	**Nonresidential Closing & Settlement Services**- Range of $100 to $500 with no articulable standards for determining fees and charges within the range.	B-2-4
4.	Mesa	9/01/94	**Nonresidential Closing & Settlement Services**- Range of $100 to $1,000 with no articulable standards for determining fees and charges within the range.	B-2-5
5.	Pueblo	3/05/96	**Premium Charge for Foreclosure Guarantee for limits of liability over $300,000-**Range of $300 to $500 with no articulable standards for determining premium charges within the range.	B-2-18
6.	Pueblo	3/05/96	**Nonresidential Closing & Settlement Services**- Range of $50 to $500 with no articulable standards for determining fees and charges within the range.	B-2-4
7.	Pueblo	3/05/96	**Endorsement 116**-Minim charge of $50.00 with no articulable standards for determining additional charges.	Section A Article 9.1 (Pueblo)
8.	Routt	4/10/97	**Nonresidential Closing & Settlement Services**- Range of $150 to $1000 with no articulable standards for determining fees and charges within the range.	B-2-6

9.	Routt	4/10/97	**Premium Charge for Foreclosure Guarantee for limits of liability over $300,000-**Range of $300 to $500 with no articulable standards for determining premium charges within the range.	B-2-6

	Territory (County)	Effective Date	Rate/Rating Rule	PAGE (section)
10.	Weld	4/10/97	**Endorsement 116**-Minim charge of $50.00 with no articulable standards for determining additional charges.	Section A Article 9.1 (Weld)
11.	Weld	4/10/97	**Premium Charge for Foreclosure Guarantee for limits of liability over $300,000-**Range of $300 to $500 with no articulable standards for determining premium charges within the range.	B-2-7
12.	Weld	4/10/97	**Nonresidential Closing & Settlement Services-** Range of $100 to $500 with no articulable standards for determining fees and charges within the range.	B-2-7
13.	Yuma	9/01/94	**Residential Closing & Settlement Services-** Range of $1.00 to $1,000 with no articulable standards for determining fees and charges within the range.	B-2-23
14.	Yuma	9/01/94	**Related Services Charge-** Range of $150 to $500 with no articulable standards for determining fees and charges within the range.	B-2-23
15.	Yuma	9/01/94	**Loan Closing & Settlement Services-** Range of $1.00 to $1,000 with no articulable standards for determining fees and charges within the range.	B-2-23
16.	Metro-Multi County	4/10/97	**Endorsement 116**-Minim charge of $50.00 with no articulable standards for determining additional charges.	Section A Article 9.1
17.	Metro-Multi County	4/10/97	**Streamline Bundled Loan & Endorsement Package-** Rule indicates issuing agent **may** issue a policy at the cited discount rate. Provided the applicant is qualified, agent should be required to provide discount.	B-2-4
18.	Metro-Multi County	4/10/97	**Premium Charge for Foreclosure Guarantee for limits of liability over $300,000-**Range of $300 to $500 with no articulable standards for determining premium charges within the range.	Section B Title 2
19.	Metro-Multi County	4/10/97	**Nonresidential Closing & Settlement Services-** Range of $300 to $500 with no articulable standards for determining fees and charges within the range.	Section B Title 2

The cited rates/rating rules contained a permissive element that left application and/or interpretation of the rate or rule to the discretion of the issuing agent. No guidelines or articulable standards were provided for determining charges that exceeded the minimums, fell below the maximums, or were within the ranges identified above. Ambiguous, discretionary rating rules allow disparate treatment between individuals of the same class and of essentially the same hazard in the amount of premium charged and such violate Colorado anti-discrimination statutes.

Recommendation #11:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(f)(II), 10-4-403 et seq., C.R.S., 10-11-108, C.R.S., and 3 CCR 702-3 (3-5-1) et seq. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has amended its Colorado Agency Manual and withdrawn any other filed rates and/or rating rules so that the material excludes any remunerative, excessive or unfairly discriminatory rates.

Issue L: Failure to maintain adequate policy records and/or other information necessary for reconstruction of the rating and/or underwriting of title policies issued by the Company.

Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent parts:

B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

2. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

b. The application for each policy, if any;

c. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and

d. Other information necessary for reconstruction of the rating and underwriting of the policy.

TITLE POLICIES ISSUED
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
44,376	100	3	3%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .23% of all title policies issued by the Company in Colorado during the period under examination showed 3 exceptions (3% of the sample) wherein the Company failed to adequately document underwriting/rating files sufficient to allow the examiners to determine compliance with Colorado law.

Two (2) of the 3 files were not sufficiently documented to allow the examiners to reconstruct premium and/or closing and settlements fees and charges and/or to determine whether the Company was in compliance with or followed its own rating rules and/or underwriting guidelines when issuing title insurance policies and/or conducting closings.

In one (1) other exception the Company charged $750.00 for “information commitment”, however, the file was not adequately documented for the examiners to determine whether or not this charge was in compliance with the Company’s filed rates.

Recommendation #12:

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of 3 CCR 702-1(1-1-7), as authorized by §10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has reviewed its procedures pertaining to record maintenance to ensure future compliance with the regulation.

Once the Company has reviewed those procedures, the Company should be required to demonstrate it has amended its record keeping and file maintenance practices and implemented procedures which will assure underwriting files will be maintained so each file contains declaration pages, endorsements, riders, guidelines or manuals associated with or used for the rating or underwriting title policies, and any other information necessary for reconstruction of the rating and underwriting of the policy.

RATING SECTION 2

Schedule of Rates, Fees & Charges

CLOSING & SETTLEMENT SERVICES.

Issue M: Failing to file a schedule of fees and charges for closing and settlement services with the Colorado Division of Insurance and/or using closing and settlement service fees and charges not on file with the Colorado Division of Insurance.

Section 10-4-401(3), C.R.S. provides:

> (b) Type II kinds of insurance, regulated by open competition between insurers, including fire, casualty, inland marine, title insurance, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner.

Additionally, Section 10-3-1104(1)(f), C.R.S., defines unfair discrimination as:

> (II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Consistent with the provision of §10-4-401 et seq., 3 CCR 702-3(3-5-1) requires all title insurers offering coverage in Colorado to comply with Colorado laws and regulations regarding rates and rating practices. Specifically, the regulation provides in pertinent parts:

> IV. SCHEDULE OF RATES, FEES AND CHARGES--TITLE INSURANCE POLICIES
>
> A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees. . .
>
> . . .G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .

> . . .J. No title entity shall quote any rate, fee or make any charge for a title policy to any person which is more or less than that currently available to others for the same type of title policy in a like amount, covering property in the same county and involving the same factors as set forth in its then currently effective schedule of rates, fees and charges. . . .
>
> . . .V. SCHEDULE OF FEES AND CHARGES--CLOSING AND SETTLEMENT SERVICES
>
> A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services. . . .
>
> . . .F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .
>
> . . .I. No title entity shall quote any fee or make any charge for closing and settlement services to any person which is less than that currently available to others for the same type of closing and settlement services in a like amount, covering property in the same county and involving the same factors, as set forth in its then currently effective schedule of fees and charges.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

> (1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.
>
> (4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

Item number four (4) of the Colorado Division of Insurance's Company Checklist of Examination Requirements requested the Company to:

4. Prepare a specimen of each policy and endorsement forms in use during the examination period; include samples of manuscripted endorsements when applicable. Prepare a copy of all title insurance rate filings applicable to the period under examination and stamped by the Colorado Division of Insurance. Provide a schedule of fees and charges for closing and settlement services, which has been stamped by the Colorado Division of Insurance.

In accordance with the Division's request, the Company prepared a specimen of all Company rate filing addressing the Company's fees and charges for closing and settlement services that were submitted to the Colorado Division of Insurance and effective during the period of examination, January 1, 1999 to December 31, 1999..

Review of the Company's filings demonstrated that the Company was not in compliance with Colorado Insurance laws regarding rate filing requirements for type II insurers. Specifically, although the rate submissions produced by the Company contained the Colorado Division of Insurance's "RECEIVED" stamp which evidenced the rates were submitted to the Division 30 days prior to the intended effective date, none of the filings bore the Colorado Division's "FILED" stamp indicating the rates were filed and not returned to the Company.

Furthermore, upon inception of the examination, the examiners requested the Company to produce any and all agency specific rate manuals and/or agency or county specific rate manuals, pamphlets, workbooks, or other written material pertaining to Company rates and fees. In response to that request, the Company produced five (5) separate notebooks containing rates and rating rules for agencies located in eleven (11) Colorado Counties (Adams, Arapahoe, Denver, Douglas, Jackson, Jefferson, Larimer, Park, Pueblo, Routt and Weld). These notebooks were produced in a fashion suitable for public dissemination with the intent to comply with the publication requirements of 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)). The notebooks also contained copies of abbreviated rate cards made available to the public as a quick reference to Company rates and charges in the respective county.

Additionally, in response to the examiners' request for copies of any and all agency specific rate manuals and/or agency or county specific rate manuals, pamphlets, workbooks, or other written material pertaining to Company rates and fees, the Company produced five (5) additional rate cards covering six (6) additional Colorado Counties (Clear Creek, Elbert, Gilpin, Mesa, Morgan, and Yuma). As in the case of the notebooks discussed above, these rate cards were made available to the public as a quick reference to Company rates and charges in the respective county and were produced in a fashion suitable for public dissemination with the intent to comply with the publication requirements of 3 CCR 702-3(3-5-1)(IV)(A)-(J), and (V)(B)-(I)).

Close review of the Notebooks and Rate Cards disclosed that the Company was not in compliance with Colorado law. Specifically, the schedule of fees and charges for closing and settlement services set forth in the Notebooks and Rate Cards contained a list of certain ancillary charges, however, several of the ancillary charges were not filed with the Colorado Division of Insurance.

One of the most comprehensive list of ancillary fees was a list of charges assessed for closings conducting in Larimer County. These ancillary charges were as follows:

<u>Ancillary Fees:</u>

Tax Information Services (including county certification)	$15.00
Overnight Courier Services	$15.00
Release Facilitation	$15.00
Document Preparation Charge	$5.00
Cashier's Check	$5.00
Wires Out	$15.00

Commonwealth Land Title Insurance Company, RATE AND SETTLEMENT CHARGES FOR LARIMER COUNTY. P.1, (ed. 3/5/96).

Failure to file the above listed charges and fees is in violation of the cited statutes and regulations.

Notwithstanding the fact that , several of the above cited ancillary charges were not filed with the Colorado Division of Insurance, many of the ancillary charges contained in the Notebooks and Rate Cards were in direct conflict with the Company's filed schedule of fees. Specifically, the Company's 1988 Base Rate Manual, effective in Colorado during the period under examination provided:

<u>OUT OF POCKET EXPENSE REIMBURSEMENTS</u> (Including but not limited to)	<u>COST</u>

Special postage or freight
Long distance calls
Recordings, tax certificates, and status reports
Bank Fees for wires, certified checks, and cashiers checks
Document preparation by outside attorney

Transnation Title Insurance Company, 1988 BASE RATE FILING, §A, Title 2, Article 2.5 (ed. effective 8/1/88).

The cited Company rating rule indicated that the charge for miscellaneous expenses accruing ancillary to any real estate and/or loan closings conducted by the Company was the actual cost of the given ancillary expense. Simply stated, the rule provided that, while there is no additional fee associated with the enumerated costs and services, the Company passed the actual cost or expense of the ancillary charge to the customer. Contrary to the "out of pocket expense reimbursement rule" cited above, the ancillary charges set forth in the Company's Notebooks and Rate cards included both the actual cost of the expense and a surcharge or handling fee. For example, when the examiners questioned the Company's practice of charging a flat fee for recording releases the Company indicated:

> The Company views the facilitation of releasing underlying loans, which can involve lengthy and multiple follow-up contacts, and possible execution title company releases, and indemnification of the public trustees for lost or unavailable notes, as a service that requires charges.

Likewise, when questioned about its policy of charging a flat fee for tax certificates the Company responded:

> The Company has always viewed our provisions of tax information as a comprehensive service including the acquisition of county certified information and the delivery of that information. Outside vendor, software, and network connections, additional handling and processing of files and delivery requires that our changes go beyond the actual county cost for a certification.

The Company also indicated that it charged a handling fee for express mail/ courier charges which occur incident to conducting closings. Specifically, when question about its policy of charging flat fees for express mail/courier services the Company indicated:

> The Company has always viewed our provisions of special or overnight mail/courier services as service inclusive of express vendor fees, equipment, software, and supplies together with a charge for handling.

The Company's practice of charging more than the actual costs incurred for recording releases, obtaining tax certificates, and/or conducting express mailings was in direct conflict with the Company's filed fee rule regarding out of pocket expenses for ancillary charges. Although the Company's rule indicated the Company only required reimbursement for expenses resulting from these services, the other Company written procedures and Company practice indicated the Company violated its own fee filing and charged insured's monies exceeding the actual cost or expenses incurred whenever the Company obtained a certification of taxes due, recorded a releases, or used express mail services in the course of a conducting a closing.

In addition, the following sample demonstrated that the Company conducted closing and settlement services in Colorado during the period under examination and collected unfiled rates, fees, and charges for such services and/or deviated from the filed rate when calculating or assessing such charges:

TITLE POLICIES ISSUED
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
44,376	100	85	85%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .23% of all title policies issued by the Company in Colorado during the period under examination showed 85 exceptions (85% of the sample) wherein the Company conducted real estate closing and settlement services in coordination with the issuance of title insurance policies and collected fees and charges for the closing and settlement services which deviated from the Company's closing and settlement services fee schedule filed with the Colorado Division of Insurance.

Many files reviewed contained more than one rating error, however, to maintain sample integrity, each file was considered as a singular exception regardless of the total errors contained in the file. Thus, the exception frequency reported above was 85%, however the 100 files reviewed contained a total of 263 closing and settlement rating errors. All rating errors fell into specific sub-categories of closing and settlement fees and charges as discussed and outlined below.

OVERCHARGES FOR MISCELLANEOUS FEES ASSOCIATED WITH REAL ESTATE & LOAN CLOSINGS CONDUCTED IN COLORADO

Express Fee Charges

In fifty nine (59) of the 85 reported files (59% of the sample), the Company collected monies from insureds for express mail and/or courier charges. Further review of Company files and the Company's unfiled ancillary fee schedules demonstrated that, whenever a closing required an express mailing, the Company's practice was to charge a flat fee for the charges incurred. The Company's flat fee for express mailings generally ranged between $15.00 and $20.00 per mailing.

As indicated above, none of the Company's rates on file with the Colorado Division of anticipate or provide for any additional charges or fees over an above the actual costs incurred for any express mailing conducted in associated with express delivery charges. Since the actual charges incurred in relation to these mailing charges was rarely documented in many of the files reported here, a complete range of error in over or undercharges was not discernable, however, in those file were the actual charges were discernable the overcharges ranged between $9.92 and $24.68.

Tax Certificate Charges

Sixty-two (62) of the 85 reported files (62% of the sample) contained overcharges related to tax certificates obtained by the Company prior to issuing title policies as required by §10-11-122, C.R.S. and on behalf of insureds in conjunction with closing services performed by the closing entity.

Specifically, a review of 100 underwriting and escrow files demonstrated that, during the period under examination, the Company had a practice of charging a flat fee for tax certificates obtained in compliance with §10-11-122, C.R.S. and in conjunction with closings services regardless of the actual cost incurred in obtaining the tax certificate. The practice of charging a flat fee for tax certificates (flat rate fees ranged between $15.00 and $20.00 per tax certificate[5]) generally resulted in the Company charging excess funds for tax certificates obtained. Since the Company failed to file any flat rate or fee with the Colorado Division of insurance regarding facilitating the acquisition of and/or obtaining tax certificates, any monies collected in excess of the actual cost of obtaining the tax certificates resulted in the collection of an unfiled fee. The 62 errors resulted in overcharges ranging between $5.00 and $70.00 on a per file basis.

[5] Range does not include instances in which the Company collected tax certificate fees that were not reasonably related to its general practice of charging a fixed fee for obtaining or facilitating the acquisition of a tax certificate.

Release Fees

In fifty-nine (59) of the 85 reported files (59% of the sample), the Company collected monies from insureds for recording releases and/or facilitating the recordation of releases. Further review of Company files and the Company's unfiled ancillary fee schedules demonstrated that, whenever a closing required recordation of a release of a prior Deed of Trust, the Company's practice was to charge a flat fee for the facilitation of obtaining and recording the release. The Company's flat fee for obtaining and recording such releases generally ranged between $19.00 and $35.00 per release.

As indicated above, none of the Company's rates on file with the Colorado Division of anticipate or provide for any additional charges or fees over an above the actual costs incurred for obtaining releases. Since the files reviewed were not always itemized to show the actual number of releases obtained for the release charges shown, a complete range of error in over or undercharges was not discernable, however, in those file were the actual charges were ascertainable the overcharges ranged between $3.00 and $54.00.

Notwithstanding the fact that the Company's practice was to charge a flat fee for recording releases and/or facilitating the recordation of releases, only 34 of the files reviewed here resulted in overcharges. The remaining 25 files were undercharges resulting from the Company's apparent failure to collect release charges. These 25 files resulted in undercharges ranging between $16.00 and $48.00.

Miscellaneous Closing and Settlements Fees and Charges

14 (14) of the 85 reported files (14% of the sample) contained overcharges made by the Company and/or its agents for miscellaneous expenses incurred in conducting closings. Such expenses include such things as wire fees, document preparation charges, and cashier's check charges. As in the case of express mail and recording charges discussed above, many of the overcharges resulted from the Company and/or its agents charging flat rates to defray the costs of such services. Since neither the Company or its agents filed any flat rates to cover these miscellaneous expenses, all monies collected in excess of the actual cost of performing or obtaining such goods or services resulted in the collection of unfiled fees. The 14 errors resulted in overcharges ranging between $5.00 and $10.00.

OVERCHARGES & MISCALCULATIONS OF FILED CLOSING FEES

Closing Fees

Fifty (50)[6] of the of the 85 reported files (50% of the sample) contained rating errors in which the Company deviated from the Company's schedule of fees and charges for regularly rendered closing and settlement services, filed with the Colorado Division of Insurance. Specifically, the files contained rating errors in which the Company made charges for basic closing fees that deviated from the Company's filed fee schedule. The 50 files contained a total of 69 errors resulted in 65 overcharges ranging between $10.00 and $200.00 and 4 undercharges ranging between $10.00 and $25.00.[7]

Twenty-two (22) of the 50 files contained rating errors for charges associated with real estate closings. Of these 22 files, 21 files contained errors resulting in overcharges ranging between $50.00 and $200.00. One (1) of the 22 files contained a rating error that resulted in a $25.00 undercharge.

Forty-seven (47) of the 50 files contained rating errors for charges associated with loan closings. Of these 47 files, 44 files contained errors resulting in overcharges ranging between $10.00 and $115.00. Three (3) of the 47 files contained rating errors resulted in undercharges ranging between $10.00 and $25.00.

<u>Recommendation #13:</u>

Within 30 days the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104(1)(f)(II) and 10-4-403, C.R.S., and the filing requirements of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to demonstrate that it has reviewed its procedures relating to the filing of rates and rating rules and has implemented procedures which will assure future compliance with the filing requirements of the law.

---

[6] Many of the 50 files reported here contained rating errors regarding closing fees for both the real estate and lender closing transaction. Where multiple closing fee errors occurred within a file, the file was only reported as a single error.

[7] The range of error reported here is based on the miscalculation or misapplication of a single closing fee, either real estate or lender. The range does not represent the total monetary error contained in a file with multiple closing fee errors.

PERTINENT FACTUAL FINDINGS

Relating to

CLAIMS SETTLEMENT PRACTICES

Issue N: Failure to adopt and/or implement reasonable standards for the prompt investigation of claims.

Section 10-3-1104(1)(h)(III), C.R.S., defines an unfair claims settlement practice as:

> (III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

TITLE CLAIMS MADE
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
60	50	21	42%

An examination of 50 systematically selected claim files, representing 83% of all title claims submitted to the Company in Colorado during the period under examination, showed, showed 21 exceptions (42% of the sample) wherein the Company failed to adopt and/or implement reasonable standards for the prompt investigation of claims arising under insurance policies.

Some files reviewed contained more than one error, however, to maintain sample integrity, each file was considered as a singular error regardless of the total errors contained in the file. Thus, the exception frequency reported above was 42%, however the 50 files reviewed contained a total of 24 errors. As specified by the heading of this issue, the 44 errors fell into two broad categories. One category was comprised of errors resulting from the Company's failure to implement its own claim handling procedures. The second category resulted from the Company's failure to adopt certain rules and/or procedures requisite to facilitate the prompt investigation or handling of claims arising under title insurance policies. Specific findings were as follows.

I. FAILURE TO IMPLEMENT COMPANY STANDARDS FOR PROMPT INVESTIGATION OF CLAIMS

Failing to Obtain Policy and/or Complete Agent Policy Verification Checklist In Compliance with Company Claims Manual:

During the period of examination, July 1, 1999 to June 30,1999, The Company's Claims Manual contained the following rule:

> Without delaying one's handling of the claim, but prior to the closing of the claim file, the claims counsel must obtain a policy copy from NPC (National Processing Center), fill out an Agent Policy Verification

> Checklist, CLT 3334 Ed. 8/93 (exhibit 27) and distribute the form as designated.

Transnation Title Insurance Company, CLAIMS MANUAL, p.3 (ed. 9/93).

Notwithstanding the cited requirement, the Company failed to obtain a copy of the referenced NPC policy and/or an "Agent Policy Verification Checklist" in 11 of the 50 claim files reviewed and in which the standard applied. The error frequency reported here is augmented by the fact that only 11 of the 50 claim files reviewed were subject to this standard and required the Company' s claims manager to acquire a copy of the underlying policy from the Company's National Processing Center and complete the referenced agent's policy verification checklist.

Specifically, the cited rule only applied to claims on policies written by independent agents. Only 11 of the 50 files reviewed were claims arising from policies issued by independent agents. Therefore, the cited standard only applied in 11 of the 50 files reviewed. The Company failed implement this claim handling procedure in all 11 files in demonstrating that, whenever the standard applied, the Company's exception frequency was 100%.

Failing to Adopt and/or Implement a "Tickler" or other such Reminder System to Facilitate Periodic Review of Open Claim Files:

During the period under examination the Company's Claims Manual contained the following rules regarding monitoring and prompt, timely review and investigation of claims:

> Claims officers should review individual claim files at appropriate intervals, prompted by a suspense or tickler system; each file should be organized so that the one reviewing it would be able to readily ascertain the history and status of the claim.
>
> A suspense or tickler system is designed to facilitate file disposition by creating mandatory review dates. This may be accomplished by several methods, the simplest of which is assigning a review date by marking the file number on a calendar under that date. Each day, the file notes should be reviewed. A second but similar method is designed to accommodate a large volume of claims. Each file is represented by an index card filed under an appropriate review date. This method permits easy reassignment of review dates.

Transnation Title Insurance Company, CLAIMS MANUAL, p.2 (ed. 9/93).

The Company failed to implement the cited standard in 7 of the 50 claim files reviewed wherein claim files remained open, idle, and void of any file notes or other documentation for periods ranging between 61 and 292 days demonstrating the files were not reviewed at reasonable intervals to facilitate the disposition of the respective claim in accordance wit the cited Company rule.

Failure to implement Company Rule Requiring Company Adjusters To Monitor Claims Assigned To Outside Counsel:

The Company's Claims Manual contained the following rules regarding retention and use of outside counsel:

> Claims officers are charged with the responsible of directing and monitoring the activity of outside counsel. . . .
>
> . . .Claims officers must complete the top portion of the COUNSEL RETENTION/EVALUATION FORM CLT-3118 each time counsel is retained and send a photocopy to the Senior Claims Counsel and the claims Department-Philadelphia before or at the time the first draft for attorney fees or related expenses is submitted. . . .
>
> . . .The degree or frequency of contact necessary to maintain control of a claim cannot be generalized. Nevertheless, it is expected that claims officers will clearly define retained counsel's role, discuss litigation strategy and estimate costs at the outset of the time counsel is retained. Unless the size of the case does not justify incurring the expense, the claim officer should request retained counsel to furnish a written analysis of the case (within 30 days of retention) outlining options available to protect the client's interest and move the case promptly to final conclusion. Further, claims officers should maintain a continual dialogue with retained counsel and review the progress of active claims at lest monthly.

Transnation Title Insurance Company, CLAIMS MANUAL, pp. 12 & 13 (ed. 9/93).

In 4 of the 50 claim files reviewed by the examiners the Company retained outside counsel to assist in handling the respective claim and subsequently forwarded expenses for fees and related services to the attorney without first obtaining and completing the requisite Counsel Retention/Evaluation Form.

In addition, the absence of any file documentation, periodic updates, and correspondence between the adjuster and outside counsel in these files indicated that the Company's claims manager did not comply with provisions of the Company's Claims Manual cited above which required more active interaction between the adjuster and outside counsel.

II. FAILURE TO ADOPT REASONABLE STANDARDS FOR PROMPT INVESTIGATION OF CLAIMS

Failure to Adopt Procedures to Avoid Delays in Investigating Claims Caused by Inadequate Response Time Between Regional Claims Office and Local Operations:

One (1) of the 21 files reviewed demonstrated that, in some instances in Colorado during the period under examination, investigation of claims was unnecessarily delayed by poor communications between the Company's Claims Office located in Seattle, Washington and regional Colorado operations. Specifically, Company claims managers located in Seattle, Washington often relied on information provided by the Company's Denver Research Center in making initial determinations into coverage. One of the claim files reviewed by the examiners contained internal processing delays caused by the failure of the Company's Denver Research Center to prioritize and/or timely respond to requests for information submitted by the Company's Claims Office located in Seattle, Washington. This resulted in an unnecessarily delaying the processing of the claim.

Based on this finding, the examiners requested the Company to indicate whether the Company had any procedures or guidelines during the period under examination which would require local operations (including agents) to provide timely responses to the State and Regional claims offices. The Company indicated that it was not aware of specific procedures maintained by branch offices for assistance with investigation.

Failing to Adopt Reasonable Standards to Address Agencies Handling Claims or Failing to Implement Standards Concerning Agencies Handling of Claims.

At the outset of the examination, the examiners requested the Company to provide the following information for the examiners to review for each of the Company's agents writing business for the Company in Colorado during 1999:

1. A list of all claims (or inquires regarding coverage) submitted to any of the Company's agencies during 1999 which were not reported, submitted or otherwise turned over to or paid or denied by the Company or a Company claims agent/adjuster. The list should be comprised of both claims paid and denied by the Company's agent, and ;

2. Copies of any manuals, memorandums, directives, procedures, letters, guidelines or any materials used by your agency to handle claims (inquiries);

The Company response to the above cited requests provided in pertinent parts:

> Insomuch as the Company is aware, Transnation agents did not handle claims or such matters which were not reported, submitted, or otherwise turned over or paid or denied by the company. Agents are instructed to forward all such

> matters immediately to the company legal department in Denver, Colorado or the Seattle Claims Center.
>
> Materials such as those listed are not issued to agents inasmuch as agents are not authorized to handle claims or such matters for the Company.

An examination of 50 systematically selected claims files demonstrated that, in at least one instance, the Company allowed one of its agents to handle a claim. Notwithstanding the fact that the agent immediately notified the Company of the claim, the Company did not acknowledge, monitor, or track the claim until 313 days later and instead allowed the agent to handle, monitor, and/or track the claim during that initial period.

Considering the fact that the Company allowed the agent to handle, monitor, and/or track the claim for the first 313 days after the Company first received notice of the claim, the examiners again requested the Company to produce written documentation demonstrating the Company had adopted reasonable claims handling procedures addressing situations in which agents were allowed to handle Company claims. The Company indicated that no such procedures existed.

In this claim file the Company's agent undertook to adjust/handle the claim during the interim period from the date the Company first received notice of the claim until the time the Company intervened, 313 days after the notice. Although a title insurer may delegate the authority to adjust claims, delegation of that authority does not relieve an insurer form its statutory charge of adopting and implementing reasonable procedures to assure the prompt investigation of claims.

Notwithstanding the above, the Company indicated that its claims practices disallow agents from handling Company claims. In this instance the Company received prompt notification of the claim from the issuing agent in accordance with the Company's stated practices. The Company, however, declined to acknowledge, monitor, or track the claim for the first 313 days and instead allowed the agent to handle the claim during that initial period. The Company's failure to assume the investigation and handling of the claim after the agent provided the Company with prompt notification of the claim does not appear to comply with the Company's stated claim procedures. Colorado law requires title insurers to implement their own claims handling procedures.

<u>Recommendation #14:</u>

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(III), C.R.S. In the event the Company is unable to show such proof, it should provide evidence that it has reviewed all Company rules, manuals and procedures relating to the investigation and handling of claims and that it has adopted reasonable procedures to assure the Division of Insurance that all claims will be acknowledged, handled, adjusted, and/or investigated in accordance with Colorado Insurance Laws.

The Company should also be required to review its Claims Manual and currents claims handling procedures and amend, reform, and/or update either the manual or procedures so that the Company's Claims Manual is an accurate reflection of current Company claims handling procedures. Any update or amendments of the manual should incorporate and address changes in the Company's claims operation systems, software, and programs pertinent to processing, handling, and documenting claims. Highlighted corrected sections of the Company's Claims Manual should be submitted to the Market Conduct Section of the Colorado Division of Insurance.

Issue O: Failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

Section 10-3-1104(1)(h)(II), C.R.S., defines an unfair claims settlement practice as:

> (II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

TITLE CLAIMS MADE
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
60	50	3	6%

An examination of 50 systematically selected claim files, representing 83% of all title claims submitted to the Company in Colorado during the period under examination, showed 3 exceptions (6% of the sample) wherein the Company failed to acknowledge and/or act reasonably promptly upon communications with respect to claims arising under insurance policies.

Two of the three (3) reported files contained an error related to the Company's failure to timely acknowledge claims related communications. In both exceptions the insured sent notice of their respective claim to Company agents. One delay was attributable to the fact that the Company's agent failed to forwarded the claim to the Company for 26 days and the Company did not acknowledged receipt of the claim notice until 42 days after the insured first submitted the notice. This does not appear reasonable as defined such term is set forth under § 10-3-1104(1)(h)(II), C.R.S.

In another instance the Company's agent received notice of a claim and immediately and promptly forwarded the claim to the Company. Notwithstanding the fact that the Company's agent forwarded the claim to the Company, the Company allowed its agent and the insured's attorney to continue investigating the matter and did not acknowledge the claim with the insured until 313 days after the insured first notified the agent of the claim.

A third file contained an exception related to the Company's failure to acknowledged and /or act reasonably promptly upon claims related communications. In this instance the Company failed to respond and/or provide timely response to a claimants multiple requests for a coverage decision demonstrating noncompliance with Colorado laws requiring insures to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

Recommendation #15:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(II), C.R.S. In the event the Company is unable to provide such information, it should provide evidence that it has reviewed its procedures relating to the handling of claims and that it has adopted reasonable procedures to assure the Division of Insurance that all communications with respect to claims arising under insurance policies will be acknowledged and acted upon in accordance with statutory requirements.

Issue P: Failure to produce and/ or maintain adequate claims records for market conduct review.

Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent parts:

C. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

2. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

3. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

a. The application for each policy, if any;

e. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and

f. Other information necessary for reconstruction of the rating and underwriting of the policy.

3. Claim files shall be maintained so as to show clearly the inception, handling and disposition of each claim. A claim file shall be retained for the calendar year in which it is closed plus the next two calendar years.

4. Records relating to the insurer's/carrier's or related entity's compliance with this state's producer licensing requirements shall be maintained, which shall include the licensing records of each agency and producer associated with the insurer or related entity. Licensing records shall be maintained so as to show clearly the dates of the appointment and termination of each producer.

5. The complaint records required to be maintained under Section 10-3-1104, C.R.S. and Regulation 6-2-1.

Records required to be retained by this regulation may be maintained in paper, photograph, microprocess, magnetic, mechanical or electronic media, or by any process which accurately reproduces or forms a durable medium for the reproduction of a record. A company shall be in compliance with this section if it can produce the data which was contained on the original document, if there was a paper document, in a form which accurately represents a record of communications between the insured and the company or accurately reflects a transaction or event. Records required to be retained by this regulation shall be readily available upon request by the commissioner or a designee. Failure to produce and provide a record within a reasonable time frame shall be deemed a violation of this regulation, unless the insurer or related entity can demonstrate that there is a reasonable justification for that delay.

TITLE CLAIMS MADE
January 1, 1999 through December 31, 1999

Population	Sample Size	Number of Exceptions	Percentage to Sample
60	50	4	8%

An examination of 50 systematically selected claim files, representing 83% of all title claims submitted to the Company in Colorado during the period under examination, showed 4 exceptions (8% of the sample) wherein the Company failed to adequately document claim files sufficient to allow the examiners to determine compliance with Colorado law. Specifically, in these 4 exceptions claim files were not adequately documented to clearly show the inception, handling and/or disposition of the respective claim.

Recommendation #16:

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of 3 CCR 702-1(1-1-7), as authorized by §10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has reviewed its procedures pertaining to record maintenance in the context of claims handling.

Once the Company has reviewed those procedures, the Company should be required to demonstrate it has amended its claims manual and implemented procedures which will assure claim files will be maintained so as to clearly show the inception, handling and disposition of each claim and generally assure future compliance with the requirements of the law.

PERTINENT FACTUAL FINDINGS

Relating to

FINANCIAL REPORTING

Issue Q: Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Company rates.

Section 10-4-404, C.R.S. provides in part:

> (1) The commissioner shall promulgate rules and regulations which shall require each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply with the standards set forth in section 10-4-403. Every insurer or rating organization shall provide such information and in such form as the commissioner may require. No insurer shall be required to record or report its loss or expense experience on a classification basis that is inconsistent with the rating system used by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering and in compiling such experience and data. No insurer shall be required to record or report its experience to a rating organization unless it is a member of such organization.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1(VII)), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

> K. Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or unfairly discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.
>
> Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

3 CCR 702-3(3-5-1) requires all title insurers authorized to provide coverage in Colorado to annually file a "Colorado Uniform Financial Reporting Plan" in a format described and appended to the regulation as "Attachment A".

In addition, the regulation requires all title insurers to file sufficient financial data and, upon request, statistical data to justify the title insurers rates and otherwise assure the rates used by the Company comply with the requirements of §10-4-403 et. Seq., C.R.S., and are not excessive, inadequate, or unfairly discriminatory.

A review of the Company's 1999 financial statement and related documents and filings demonstrated that the Company failed to file a Colorado Uniform Financial Reporting Plan [3 CCR 702-3 (3-5-1) attachment A] as required by the regulation. In addition, the Company failed to file sufficient financial data to allow the Division to determine whether rates used by the company were excessive, inadequate, or unfairly discriminatory.

Recommendation #17:

Within 30 days, the Company should demonstrate why it should not be considered in violation of the financial data filing requirements established under 3 CCR 702-3(3-5-1(VII)(K)). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its annual filing procedures so that those procedures anticipate filing of the Colorado Uniform Financial Reporting Plan (Schedule A). The Company should also be required to provide written assurances that it will annually file sufficient financial data to allow the Commissioner to determine whether the insurers rates are inadequate, excessive, or unfairly discriminatory and otherwise assure future compliance with Colorado financial reporting and filing laws.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON TRANSNATION TITLE INSURANCE COMPANY

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
1	12	**Issue A:** Failure to maintain minimum standards in a record of written complaints.
2	16	**Issue B:** Failure to provide written notification to prospective insureds of the Company's general requirements for the deletion of the standard exception or exclusion to coverage related to unfiled mechanic's or materialman's liens and/or the availability of mandatory GAP coverage.
3	18	**Issue C:** Misrepresenting the benefits, advantages, conditions or terms of insurance policies by omitting applicable endorsements.
4	21	**Issue D:** Failing to adopt, print, and/or make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies and/or regularly rendered closing and settlement services.
5	23	**Issue E:** Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers.
6	30	**Issue F:** Failure to follow Company underwriting procedures and/or guidelines and discriminatory underwriting practices.
7	31	**Issue G:** Issuing title insurance policies without obtaining a certificate of taxes due.
8	44	**Issue H:** Making, issuing, and/or circulating an estimate, circular, statement and or sales presentation which misrepresents the benefits, advantages, conditions, and/or terms of title insurance policies.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON TRANSNATION TITLE INSURANCE COMPANY

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
9	55	**Issue I:** Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify certain title insurance premium rates.
10	60	**Issue J**: Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or misapplication of filed rates.
11	72	**Issue K:** Engaging in unfairly discriminatory rating practices and adopting rate rules and/or premium charges that are excessive, unfairly discriminatory and/or adopting rating rules or premium charges that improperly favor producers of title insurance business.
12	74	**Issue L:** Failure to maintain adequate policy records and/or other information necessary for reconstruction of the rating and/or underwriting of title policies issued by the Company.
13	84	**Issue M:** Failing to file a schedule of fees and charges for closing and settlement services with the Colorado Division of Insurance and/or using closing and settlement service fees and charges not on file with the Colorado Division of Insurance.
14	90	**Issue N:** Failure to adopt and/or implement reasonable standards for the prompt investigation of claims.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON TRANSNATION TITLE INSURANCE COMPANY

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
15	93	**Issue O:** Failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
16	96	**Issue P:** Failure to produce and/ or maintain adequate claims records for market conduct review.
17	99	**Issue Q:** Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Company rates.

EXAMINATION REPORT SUBMISSION

Independent Market Conduct Examiners
Duane G. Rogers, Esq.,
&
J. Reuben Hamlin, Esq.,
participated in this examination and in the preparation of this report.